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HBC
Mills







The Lands of the Five Civilized Tribes

**A Treatise Upon the Law Applicable to the Lands of
the Five Civilized Tribes in Oklahoma**

with a

**Compilation of all Treaties, Federal Acts, Laws of Arkan-
sas and of the Several Tribes Relating Thereto**

together with the

**Rules and Regulations Prescribed by the Secretary of the
Interior Governing the Sale of Tribal Lands, the
Leasing and Sale of Alloted Lands and
the Removal of Restrictions.**

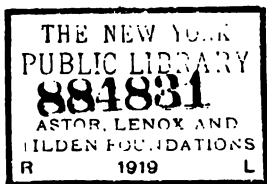
By

LAWRENCE MILLS


of the Oklahoma City, Okla., Bar

1919

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St. Louis, Mo.**



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LAWRENCE MILLS



P R E F A C E

The lands of each of the Five Civilized Tribes were allotted and distributed to the members thereof in pursuance of acts and treaties applicable only to that tribe. The manner of affecting the change from tribal to individual ownership in each of the tribes was the same, and the laws and agreements designed to accomplish that end were substantially alike in all of the tribes. But while these laws and treaties, when viewed as a whole, were substantially alike, they were, in many details, fundamentally dissimilar, which had led to a great diversity of legal effects. Many of the difficulties and complexities involving the subject of Indian land law is due to the failure to observe these differences.

From the involved nature of the subject and the number of the different sets of laws and treaties, the difficulties in the way of a suitable classification are almost insurmountable and I can hope only that I have approximately succeeded in that respect. The Acts of April 26, 1906 and May 27, 1908 applied to the members of all of the tribes, and were very far reaching in their effects upon the restrictions on alienation upon inherited and allotted lands respectively. I have, therefore, adopted the Act of April 26, 1906, as the point at which the laws applicable to the particular tribe, governing the alienation of the inherited lands in that tribe, merged into the general legislation of Congress that applied to all of the tribes; and, similarly, the Act of May 27, 1908, as the point of confluence in the case of allotted lands. In the arrangement which I have followed I have undertaken to show the restrictions that applied to the lands of each tribe, under its allotment agreements, and the status, in regard to alienation, of the inherited and allotted lands, respectively, at the time of the passage of those acts. I have then endeavored to show the effect of those and other *acts upon the restrictions* imposed under the original *agreements*. Under this classification, each tribe has been



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PREFACE

treated separately from the passage of the Curtis Act to the Acts of April 26, 1906 and May 27, 1908, and thereafter has been treated together.

I have not undertaken to discuss the land laws of Oklahoma, generally, but have confined myself to a consideration of the particulars wherein the laws applicable to the lands of the members of the Five Civilized Tribes, departed from those governing the lands of the non-tribal citizens. In part two will be found all of the Federal acts and treaties, the laws of Arkansas and of the several tribes, applicable to the subject. together with the Probate Rules. Part three contains all of the rule and regulations promulgated by the Secretary of the Interior under authority of the several acts of Congress.

LAWRENCE MILLS.

Oklahoma City, Okla., March 14, 1919.



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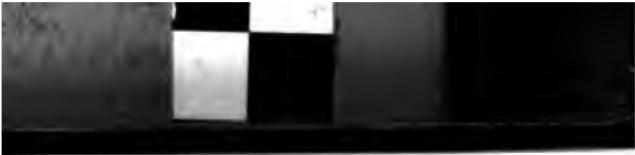
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- 414. Appraisement of Land.
- 415. Appraisement by Commission.
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- 417. 10 Acres Smallest Legal Subdivision.
- 418. Homestead—Restrictions.
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- 428. Delawares.
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- 432. Rolls Made in Compliance With Curtis Act, etc.
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- 435. Enrollment of Children Born Subsequent to Sept. 1, 1902.
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- 438. Teachers.
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- 445. No Improvements.
- 446. Possession With Improvements.
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- 450. Terms of Sale.
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- 452. Cemeteries.
- 453. United States to Pay Expense of Platting, etc.
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- 455. Past-due Payment to Bear Interest.
- 456. Church and Parsonage Lots.
- 457. Vacancy in Commission
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- 460. Lots for Court Houses, Etc.
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- 462. Conveyances to be Approved.
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- 464. Acceptance of Patents for Minors, Etc.
- 465. Patents to be Recorded.

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- 472. No contest After Nine Months.
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- 474. Buildings of Nation.
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- 477. Effective Upon Ratification.
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(30 Stat. 495.)

- § 479. Parties to Agreement.
- 480. Allotments Equal in Value.
- 481. Coal and Asphalt Reserved.
- 482. Allotments of Freedmen Deducted.
- 483. Freedmen, 40 Acres Each.
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- 492. Failure of Owner of Improvements to Purchase.
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- 495. Unsold Lots Not Taxable.
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- 508. Tribal Funds.
- 509. United States Citizenship.
- 510. Lands in Mississippi.

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Chap. 1362.—An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of and for other purposes. Adopted July 1, 1902, and ratified September 25, 1902. (32 Stat. 641.)

- § 511. Parties to Agreement.
- 512. Definition "Nations" and "Tribes."
- 513. Definition "Chief Executive."
- 514. Definition "Member," "Members," "Citizen," "Citizens."
- 515. "Atoka Agreement."
- 516. Definition "Minor."
- 517. Definition "Select."
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- 519. Definition "Allotable Land."
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- 525. Residue of Tribal Lands.
- 526. Alienation—Exemption.
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- 536. Selection of Allotment.
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- 540. Members Living On Date of Ratification of Act.
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- 542. Rolls When Approved, Final.
- 543. Court Claimants.
- 544. Appellate Jurisdiction of Citizenship Court.
- 545. Citizenship Court.
- 546. Time for Application for Enrollment.
- 547. Only Enrolled Members to Participate.
- 548. Right of Chickasaw Freedmen Referred to Court of Claims.
- 549. Bill to be Filed by Attorney General.
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- 559. Townsites Hereafter Reserved.
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- 562. Townsite Commissions.
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- 572. Segregated Lands May be Sold Within Six Months.
- 573. Coal and Asphalt Lands Not to be Leased.
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- 578. Supplemental Agreement Supercedes Curtis Act and At Agreement.
- 579. Allotment Controversies.
- 580. Selection of Allotments for Minors, etc.
- 581. No Contest After Nine Months.
- 582. Per Capita Payments.
- 583. Agreement Binding When Ratified.
- 584. Canvass of Votes.

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Chap. 676.—An Act to ratify and confirm an agreeeme with the Muscogee or Creek tribe of Indians, a for other purposes. Approved March 3, 1901; ra fied May 25, 1901. (31 Stat. 861.)

- § 585. Preamble.
- 586. Parties to Agreement.
- 587. Definitions.
- 588. Allotable Lands to be Appraised.
- 589. Standard Allotment.
- 590. Allotment in Excess of Standard Value.
- 591. Selection for Minors, etc.
- 592. Excessive Holdings.
- 593. Allotments Under Curtis Act Confirmed.
- 594. Restrictions—Exemptions.
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- 596. Homestead for Use of Heirs Born Subsequent to Ratificati
- 597. Allottee to be Put in Possession.
- 598. Residue of Tribal Lands for Equalizing Allotments.
- 599. Townsites.
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- 601. Commission for Each Town.
- 602. Appraisement of Lots.
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- 604. Townsite in Railway Line.
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- 607. Home at One-half Appraised Value.
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- 610. Terms of Payment.
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- 612. Unsold Lots Not Taxable.
- 613. Cemeteries.
- 614. Sites for Court Houses, etc.
- 615. Henry Kendall College—Nazareth Institute.
- 616. Churches, Parsonages, etc.
- 617. Certain Towns Authorized to be Platted.
- 618. Allotment Patents.
- 619. Deeds to Other Than Allotments.
- 620. All Conveyances to be Approved.
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- 625. Claims Against the United States.
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- 630. Rolls Final.
- 631. Enrollment of Certain Creek Indians Authorized.
- 632. Deferred Payments.
- 633. Monies of Tribe.
- 634. Monies, How Paid Out.
- 635. Monies Paid Out Only On Consent of Tribe.
- 636. United States to Pay Expense of Platting Townsites.
- 637. Parents Natural Guardians.
- 638. Seminole Citizens in Creek Nation.
- 639. Agricultural Leases.
- 640. Timber.
- 641. Non-Citizens Not Required to Pay Permit Tax.
- 642. Creek Schools.
- 643. Inconsistent Provisions of Acts of Congress Not to Apply.
- 644. Acts of Creek Council to be Submitted to President.
- 645. Intoxicating Liquors.
- 646. Existing Treaties in Effect Except Where Inconsistent.
- 647. General Powers Upon Secretary.
- 648. Tribal Government to Expire March 4, 1906.
- 649. Creek Courts Not Revived.



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Chap. 1323.—An Act to ratify and confirm a supplemental agreement with the Creek tribe of Indians, and for other purposes. Approved June 30, 1902; ratified July 26, 1902; effective August 8, 1902. (32 Stat. 500.)

- § 650. Preamble.
- 651. Parties to Agreement.
- 652. Definition of Term.
- 653. Section 2 of Original Agreement Amended.
- 654. \$6.50 Maximum Appraisement.
- 655. Appraisement, by Whom Made.
- 656. Paragraph 2 of Section 3 of Original Agreement Amended.
- 657. Jurisdiction of Secretary Over Allotment Controversies.
- 658. Lands Selected by Mistake.
- 659. Arkansas Law of Descent Substituted for Creek Law—
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- 660. Enrollment of Children—Death Before Selection.
- 661. Children Not Listed—Death Before Selection.
- 662. Supplemental Roll.
- 663. Roads.
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- 666. Cemeteries—Continued
- 667. Per Capita Payments.
- 668. Certain Provisions for Reservations Repealed.
- 669. Restrictions Upon Alienation—Homestead.
- 670. Selections for Minors, etc.
- 671. Homestead for Use of Children Born After May 25, 1901.
- 672. Leases.
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chap. 542.—An Act to ratify the agreement between the Dawes Commission and the Seminole Nation of Indians. Ratified by tribe December 16, 1897; approved July 1, 1898. (30 Stat. 567.)

- 678. Preamble.
- 679. Parties to Agreement.
- 680. Lands Graded.
- 681. Restrictions Upon Alienation.
- 682. Agricultural Leases.
- 683. Coal, Mineral, Coal Oil, Natural Gas.
- 684. Townsite of Wewoka.
- 685. Schools.
- 686. Reservations.
- 687. Patents—Homestead—Restrictions.
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- 689. Loyal Seminole Claim.
- 690. Terms of United States Court.
- 691. Not to Affect Existing Treaties Except Where Inconsistent.
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- 694. United States to Purchase Additional Lands.
- 695. Treaty Binding When Ratified.
- 696. Seminole Tribal Government Not to Continue After March 4, 1906.
- 697. Seminole Homestead—Restrictions.

CHAPTER XLVIII.

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chap. 610.—An Act to ratify an agreement between the Commission to the Five Civilized Tribes and the Seminole tribe of Indians. Concluded October 7, 1899; approved June 2, 1900. (31 Stat. 250.)

- 698. Preamble.
- 699. Final Rolls.
- 700. Death Before Selection.
- 701. Effective When Ratified.



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- § 702. Membership of Commission to Five Civilized Tribes reduced to Four.
- 703. Commission Not to Receive Applications of Those Not rolled.
- 704. Mississippi Choctaws May Make Proof of Settlement Any Time Prior to Approval of Final Rolls.
- 705. Townsites.
- 706. Townsite Commission.
- 707. Secretary May Segregate Townsite.

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- 708. Vacancy in Townsite Commission Filled by Secretary.
- 709. Rolls When Approved by Secretary Final.
- 710. Secretary Authorized to Fix Time for Closing Rolls.
- 711. Acts of Creeks or Cherokees Not Valid Until Approved by President.
- 712. Easement for Telegraph and Telephone Lines.
- 713. Telegraph and Telephone Lines, Taxation.
- 714. Regulations by Towns.
- 715. Condemnation of Allotted Lands for Public Purpose.

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- 716. Members of Five Civilized Tribes Made United States Citizens.

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- 717. Enrollment of Certain Creek Children—Death Before Election.
- 718. Original Creek Agreement Putting in Force Creek Land Descent Repealed.
- 719. Townsites—Townsite Commissions.

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- 719a. Fixing Effective Date of Act May 27, 1902.



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- . Chapter 27, Mansfield's Digest Put in Force.
- . Clerks of United States Courts Ex Officio Recorders.
- . Instruments Recorded—Filed.
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- . Substitution of Words to Make Act Applicable.
- . Officers Authorized to Take Acknowledgments.
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- . Secretary Authorized to Sell Residue of Creek Lands.
- . Removal of Restrictions of Members Not of Indian Blood—
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- . Sale of Segregated Lands of Choctaws and Chickasaws.
- . Surface of Leased Coal and Asphalt Land.

ACT APRIL 28, 1904.

- . Full Probate Jurisdiction Conferred on United States
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- . Lease by Guardian, Executor or Administrator Void Un-
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- . Sale of Lots in Wewoka Confirmed.
- . Enrollment of New-born Choctaw and Chickasaw Children
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- . Enrollment of New-born Creek Children Authorized.
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ACT MARCH 2, 1906.

- . Extending Tribal Governments.

ACT JUNE 21, 1906.

- . Authorizing the Printing of the Rolls.
- . Enrollment of Full-blood Mississippi Choctaws.

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- . Filing of Lease, Constructive Notice.
 - . Tribal Courts of Choctaws and Chickasaws Abolished.
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- § 743. Enrollment.
- 744. Enrollment of Minor Children—Rolls Closed—Conte
- 745. Creek Freedmen.
- 746. Cherokee Freedmen.
- 747. Allotments of Choctaw-Chickasaw Freedmen, Home
- 748. Transfer from Freedman Roll to Citizen Roll Prohib
- 749. Patents in Name of Deceased Allottee—Record of 1
- 750. Removal of Chief Executive of Tribe.
- 751. Failure of Chief Executive to Sign Conveyance.
- 752. Authorizing Delivery of Patents in Seminole Nation
- 753. Reservation from Allotment.
- 754. Appraisement and Sale of Pine Timber.
- 755. Records of Land Offices, How Preserved.
- 756. Disbursement of Loyal Seminole Claim Confirmed.
- 757. Court of Claims to Determine Controversies.
- 758. Tribal Schools.
- 759. Collection and Disbursement of Tribal Funds.
- 760. Accounting of Tribal Affairs.
- 761. Sale of Lots Reserved for Miners.
- 762. Failure to Pay Purchase Price of Lots.
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- 764. Conveyance of Reserved Lands to Company, etc., Et
- 765. Patent to Murrow Indian Orphans' Home.
- 766. Unallotted Fractions.
- 767. Lands to Murrow Indian Orphans' Home.
- 768. Tribal Buildings, etc., to be Sold.
- 769. Sale of Residue of Tribal Lands—Preference Rig
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- 770. Disposition of Proceeds.
- 771. Jurisdiction of Tribal Suits.
- 772. Set-off Allowed Defendants.
- 773. Restrictions Upon Full-blood Indians Extended.
- 774. Deeds Before Issuance of Patent, Valid.
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- 776. Unrestricted Land Taxable.
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- 778. Lands to Revert in Default of Heirs.
- 779. Removal of Restrictions, Adult and Minor Heirs.
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- 782. Light of Power Companies.
- 783. Municipal Corporations — Assessment for Local Improvement.
- 784. Taxation of Railroads.
- 785. Tribal Lands Not to Become Public Lands.
- 786. Tribal Governments Continued.

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- § 787. Status of Allotted Lands in Regard to Alienation.
- 788. Leases of Restricted Land.
- 789. Enrollment Records, Evidence of Age and Quantum of Indian Blood.
- 790. Status of Prior Leases.
- 791. Lands from Which Restrictions Removed, Taxation, Exemption.
- 792. Effect of Attempted Alienation of Restricted Land.
- 793. Probate Courts Given Jurisdiction of Indian Minors.
- 794. Secretary Authorized to Sue for Allottees.
- 795. No Contests After Sixty Days.
- 796. Judge of County Court Authorized to Approve Conveyances.
- 797. Status of Inherited Land in Regard to Alienation.
- 798. Choctaw-Chickasaw School Warrants.
- 799. Collection of Royalties on Mineral Leases.
- 800. Disposition of Allotment Records.
- 801. Accounting of Tribal Affairs.
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- 803. Sale of Land for School Purposes Authorized.



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804. Deeds Issued After Death of Allottee, Effect of.

ACT MARCH 3, 1911.

805. Deputy May Sign Allotment Deed for Secretary of

ACT FEBRUARY 19, 1912.

806. Sale of Surface of Segregated Coal Lands Authoriz
807. Lessee to Have Option to Purchase.
808. Right of Entry for Prospecting Retained.
809. Resale Without Regard to Appraised Value.
810. Sales, How Conducted.
811. Lands Not Valuable for Coal or Asphalt.
812. Patent After Purchase Price Paid.
813. Appropriation for Expenses of Appraisement, etc.
814. Secretary to Prescribe Rules and Regulations.

ACT AUGUST 24, 1912.

815. Sale of Timber Land Authorized.

ACT AUGUST 24, 1912.

816. Segregated Coal Lands—Improvements.
817. Acceptance of Purchase Price of Town Lots.
818. Extending Time for Classifying and Appraising C
Asphalt Lands.
819. Extending Time for Classifying and Appraising C
Asphalt Lands.

ACT DECEMBER 8, 1913.

820. Extending Time for Classifying and Appraising C
Asphalt Lands and Improvements.

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ACT AUGUST 1, 1914.

823. Office of Superintendent of Five Civilized Tribes C

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824. Superintendent of Five Civilized Tribes Authorized to Approve Uncontested Leases, Except Oil and Gas Leases.

ACT JUNE 14, 1918.

825. Determination of Heirship.
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Chap. 374.—An Act to provide for the acquiring of the rights of way by railroad companies through Indian reservations, Indian lands and Indian allotments, and for other purposes. (30 Stat. 990.)

- § 827. Railway Right of way Through Indian Lands.
828. Right of Way Not to Exceed Fifty Feet, Except.
829. Manner of Acquiring.
830. Time Limit for Commencement and Completion.
831. Annual Charge to be Fixed by Secretary.
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833. Section 2 of Act March 3, 1875, Made Applicable.
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- 840. Compensation to Indian Tribes.
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- 843. Jurisdiction of United States Court.
- 844. Rate of Construction.
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- 856. To Obtain Benefits of Act.
- 857. Act of March 2, 1899, Repealed.

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- § 858. Right of Way for Pipe Lines Through Indian Lands.

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- § 859. Lands May be Aliened by Deed—Words "Grant, Bar and Sell" Equivalent to Express Warranty.
860. Breaches May be Assigned as Upon Express Covenant.
861. Conveyance in Fee Simple.
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- 876. Acknowledgment by Grantor.
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- 878. How Proved When Witness is Dead.
- 879. Married Women, Conveyance and Relinquishment of Dower by.
- 880. To be Proved or Acknowledged Before Recorded.
- 881. Power of Attorney, Requisites of.
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- 883. Revocation of.
- 884. Deeds Proved or Acknowledged to be Recorded and Then May be Read in Evidence.
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- 886. Not Conclusive.
- 887. Commissioner of State Lands, How Deeds Executed by, No Acknowledgment Required.
- 888. Administrator, etc., Deed by; Effect of; Copy, Evidence.
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- 897. Issues of Marriage Null in Law, or Dissolved by Divorce, Legitimate.
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- 899. No Kindred to Inherit, Whole to Go to Wife or Husband; No Wife or Husband, Estate to Escheat.
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- 904. Those of Half-blood, How to Inherit.
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- 906. All Who Inherit to do so as Tenants in Common.
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CHAPTER LXIV.

REGULATIONS OF SEPTEMBER 24, 1918

Governing the sale of the coal and asphalt deposits in the segregated mineral area in the Choctaw and Chickasaw Nations, Oklahoma, under the provisions of the Act of Congress approved February 8, 1918. (Public—No. 98—Sixty-fifth Congress.)

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CHAPTER I.

INTRODUCTION

- § 1. Indian Territory.
2. Creation of Commission to Five Civilized Tribes.
3. Curtis Act.

§ 1. **Indian Territory.**—At the time of the removal of the tribes known as the Five Civilized Tribes from their homes east of the Mississippi to the Indian Territory, that country was intended as the permanent abiding place of such tribes, where as self governing communities, they should be free to enjoy their own tribal laws and customs forever, free from the interference or encroachment of the whites. By the treaty with the Cherokees of May 3, 1828, the United States guaranteed that their permanent home west of the Mississippi “shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State,” and practically the same guarantee was reaffirmed in the treaty of December 29, 1835. By the treaty with the Choctaws of September 27, 1830, the United States granted to the Choctaws exclusive jurisdiction and self government over the persons and property of the nation, and stipulated “that no part of the land granted them should ever be embraced in any Territory or State.” And by treaty with the Chickasaws of May 24, 1834, the government consented to protect the tribes in this new home against any other tribes and from the whites, and agreed to keep them without the limits of any State or Territory. By Article 14 of the treaty of March 24, 1832, the Creeks were guaranteed “that no State or Territory should ever have a right to pass laws for the government of said In-

dians, but that they should be allowed to govern themselves, etc." And by joint treaty with the Creeks and Seminoles of August 7, 1856, it was provided that no State or Territory should ever pass laws for said tribes, and that no portion of their lands should ever be embraced or included in a State or Territory.

During the Civil War, the Creeks on the 10th day of July, the Choctaws and Chickasaws on the 12th day of July, the Seminoles on the 1st day of August and the Cherokees on the 7th day of October, 1861, entered into treaties with the Confederate States. As a result of such action by the respective tribes, the President of the United States was by the Act of July 5, 1862, authorized to declare all treaties existing between the United States and said tribes to be abrogated, if in his opinion it could be done consistently with good faith and legal and national obligations.

After the conclusion of the war, the government seems to have adopted the policy of forming a federalized territorial government of delegated powers somewhat similar to the government of the United States, comprising all of the tribes which then occupied or might be removed to the Indian Territory. A commission was appointed to make new treaties with the tribes, upon the basis of several conditions, one of which was that "it is the policy of the government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory."

New treaties were concluded with each of the tribes during 1866, whereby the terms of former treaties, not inconsistent with the terms of the treaties then adopted, were reaffirmed. Each, however, was compelled to confer certain rights upon their former slaves, and to agree to the establishment of a United States Court in the Indian Territory.

For the purpose of carrying out the plan for a federated Indian government,¹ certain identical provisions were inserted in each treaty. It was provided that a census should be taken of each tribe, and that a General Council consisting of delegates elected by each tribe, resident within the Indian Territory, might be convened annually "which Council shall organize in such manner and possess such powers as are hereinafter described." The authority delegated to the General Council was as follows:

"The said General Council shall have power to legislate upon all rightful subjects pertaining to the intercourse and relations of the Indian tribes and nations resident in said territory; the arrest and extradition of criminals and offenders escaping from one tribe to another; the administration of justice between members of the several tribes of said Territory and persons other than Indians and members of said tribes or nations; and the construction of works of internal improvement and the common defense and safety of the nations of said territory."

As a limitation upon the powers of such Council it was expressly provided "Nor shall such Council legislate upon matters pertaining to the organization, laws, or customs of the several tribes, except as herein provided for."

Nothing ever came of the plan of organizing a purely Indian government, but the territory intended to be thus organized, was marked upon the maps, and denominated the "Indian Territory," as the result of the policy of the government in this respect.¹

§ 2. Creation of Commission to Five Civilized Tribes.—

As the population of the States contiguous to the Indian Territory increased, the whites overflowed into the Territory where they formed the commercial classes and improved and cultivated the land as tenants of the Indians. So extensive was this movement of the whites that in a re-

¹ Senate Report, 53rd Congress, 2nd Session, No. 377; Kappler's *Laws and Treaties*, Vol. 2, pages 910, 918, 931, 942.

port of the Senate Committee in 1894, the white population of the Indian Territory was estimated at 250,000. Thus partly as a result of the shortsightedness of the Indians in admitting the whites into their country, and partly as a result of the pressure of the dominant race which had overridden them in their home east of the Mississippi and which they were again powerless to resist, that seclusion and isolation which they had sought by the immigrations to the Indian Territory was lost.

The white residents of the territory, not members of any of the Indian tribes, were without school facilities of any kind. In addition, the Indian laws and Indian courts had no jurisdiction of the white settlers, and the Indian Territory became the refuge of criminals from adjoining States. To meet the last conditions by Act of January 31, 1877, the Indian Territory was for judicial purposes attached to the Western District of Arkansas. By the Act of January 6, 1883, that part of the territory lying north of the Canadian River was annexed to the Western District of Kansas, and that part lying south of the river was attached to the Northern District of Texas. By the Act of March 1, 1889, Congress established a United States Court in the Indian Territory. Its jurisdiction in criminal cases extended to all offenses committed in that territory against any of the laws of the United States, not punishable with death or imprisonment at hard labor. It was given civil jurisdiction over all controversies where the amount involved exceeded \$100.00, except when both parties were members of the Indian tribes, in which event, the Indian courts retained exclusive jurisdiction. The white residents of the territory were greatly dissatisfied with the tribal administration of the country, and were naturally eager for the introduction of their own laws and institutions, a desire which was greatly stimulated by the opening of the western part of the Indian Territory under the name of Oklahoma, to white settlement in 1890. Such action, however possible without violation of the treaties with the

ral tribes, only upon the voluntary conversion of the title to the land, which was held by each tribe for the benefit of its members, into an individual ownership, a dissolution of the tribal government, and the creation of either territorial or state government.

The general policy of the government in the handling of the affairs of the Indians in the different States since 1882, has been to effect the allotment of the lands in severalty, with restrictions upon its alienation and to confer the rights of citizenship, state and national, upon the members to whom allotments are made. This policy is clearly manifested by the General Allotment Act of February 8, 1887, which, however, did not apply to the Five Civilized Tribes. In the treaty with the Choctaws and Chickasaws concluded in 1866, very elaborate provisions were made for the allotment of the lands of those nations in severalty, and in the treaty with the Cherokees during the same year it was stipulated "whenever the Cherokee Council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them at the expense of the United States." No steps were taken, however, to carry out the allotment of the lands of those nations, but such provisions show that the idea was even then being entertained. The first effectual step in the direction of the dissolution of the tribal governments and the allotment of the lands of the tribes in severalty was the passage of the Act of March 3, 1893. By that Act was created the Commission to the Five Civilized Tribes, commonly called the Dawes Commission, from the name of its chairman. The commission consisted of three members, viz.: Henry L. Dawes, Meredith L. Kidd and A. S. McKennon, which was increased to five by the Act of March 2, 1895, and reduced to four by the Act of March 1, 1899. There were various changes in the personnel of the commission and in 1897 Mr. Tams Bixby was appointed a member, who served as vice-chairman. Mr. Dawes died on February 16, 1903, and Mr. Bixby succeeded him as chairman. The

life of the commission came to an end on June 30, 1905, by virtue of the Act of March 3, 1905, by which it was provided that the work of completing the unfinished work of the commission and all the powers theretofore granted it should be conferred upon the Secretary of the Interior. Mr. Tams Bixby was on the 1st day of July, 1905, appointed "Commissioner to the Five Civilized Tribes," with practically the same powers and functions theretofore exercised by the commission. He resigned on the 30th day of June, 1907, and Dana H. Kelsey was appointed his successor. By Act of August 1, 1914, the office of Commissioner was abolished, and its duties and function conferred upon the Superintendent of Five Civilized Tribes.

The purpose of the commission so appointed and the duties assigned to them under said Act was "to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Muskogee (or Creek) Nation, the Seminole Nation, for the purpose of extinguishment of the national or tribal title to any lands in that territory now held by any or all of such nations or tribes, either by the cession of the same or some part thereof to the United States or by the allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, upon the basis of justice and equity, as may, with the consent of such nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory."

The Commissioners betook themselves to the Indian Territory, but they found the sentiment of the members of all of the tribes most hostile to the proposed allotment of the land and the abolishment of their tribal governments. The Commissioners met with the tribal Councils and legislative bodies and addressed the Indians directly through inter-

s, in all parts of the Territory, but were unable to
me their opposition. The legislative bodies of sev-
the tribes appointed committees to negotiate with
mission, but the powers of these committees were
carefully limited, and all tentative agreements for-
d invariably failed of ratification by the tribe. After
years of fruitless negotiation, Congress despaired of
olishing its purpose by voluntary action of the tribes
etermined to proceed without their consent. By the
June 10, 1896, the Commission was directed to pre-
olls of the tribes, which were plainly designed, and
ed to be so understood by the Indians, as preliminary
tment. That there might be no misapprehension upon
rt of the tribes, as to the intention of Congress, it
acted:

s hereby declared to be the duty of the United States
blish a government in the Indian Territory which
ctify the many inequalities and discriminations now
g in said Territory, and afford needful protection to
es and property of all citizens and residents there-

he Act of June 7, 1897, the United States courts were
riminal and civil jurisdiction after January 1, 1898,
ll persons in the Territory. The laws of Arkansas
ed over the Indian Territory by Act of May 2, 1890,
nade to apply to all persons, regardless of race or
affiliations; and the members of said tribes, who
speak and understand the English language, were au-
d to serve as jurors, and acts, ordinances and reso-
of the Councils of the several tribes were declared
ineffective, after January 1, 1898, if disapproved by
esident of the United States. Further provision was
for compiling the rolls of citizens of the tribes and
ey of the lands of the nations authorized. That Con-
hoped by such measures to induce the tribes to en-
o agreement for the allotment of their lands in sev-

eralty, which hitherto they had refused to do, is clearly apparent from the following provision of said Act:

“That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provisions of this Act if it conflict therewith as to said nation.”

The expressed determination of Congress to proceed with allotment, without the consent of the tribes had the desired effect. The Indians realized that allotment and dissolution of their governments were inevitable and that it was the part of wisdom to take part in the legislation by which those ends were to be accomplished. Accordingly, agreements were concluded by the Commission with representatives of the Choctaws and Chickasaws on April 23, 1897, of the Creeks on September 27, 1897, and of the Seminoles on December 16, 1897. The Cherokees, however, still refused their assent to any agreement that the Commission was authorized to conclude.

§ 3. **Curtis Act.**—The agreements submitted for ratification by the Creeks and Choctaws and Chickasaws were not acceptable without amendment and the Cherokees obstinately refused to give their assent to any treaty that could be considered. It was under these conditions that Congress passed the Act of June 28, 1898, commonly called the Curtis Act. The tribes most bitterly opposed its passage and sent delegates to Washington who appeared before the Committees of Congress in opposition to it. On the other hand, its passage was as strongly advocated by the Commission to the Five Civilized Tribes and the contention between the two became very bitter and personal.

By the Acts of June 10, 1896, and June 7, 1897, preliminary measures for the allotment of the lands of the Five Civilized Tribes had been taken, but by the Curtis Act

plan for accomplishing the legislative purpose was prescribed and the actual allotment undertaken, which did not depend upon the consent of the tribes. The existence of cities and towns in the Indian Territory was recognized, procedure for acquiring title to the lots in such towns outlined and a form of government therefor provided. All tribal courts were abolished, the laws of the various nations declared unenforceable at law or in equity in the United States Courts, and additional regulations provided for the compilation of the rolls of the various tribes.

By Section 11 it was provided:

"That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the Commission heretofore appointed under Acts of Congress and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location and value of same. . . ."


The agreement with the Choctaws and Chickasaws of April 23, 1897, as amended to conform to the requirements of Congress, was ratified and included in said Act as Section 29, thereof; and the agreement with the Creeks of September 27, 1897, as amended thereby, was also ratified and made a part of the Act as Section 30. As to both agreements it was provided that if as so amended said agreements should be ratified by the respective tribes prior to September 1, 1898, they should be in full force and effect, and that the provisions of said Act should then only apply to said tribes where the same did not conflict with the provisions of said agreements.

The agreement with the Choctaws and Chickasaws embodied in said Act was ratified by the tribes on August 24,

1898, and became the basis for allotment in those nations under the name of the Atoka Agreement. The agreement submitted to the Creeks, however, failed of ratification at an election held on November 1, 1898, and never became effective. An agreement with the Creeks, known as the Original Agreement, was finally negotiated on April 8, 1900, adopted by Congress by Act of March 1, 1901, and ratified by the tribes on May 25, 1901. In the interval between the rejection of the treaty submitted by the Curtis Act, and the adoption of the Original Agreement, the Commission had made allotments to a majority of the Creek citizens under Section 11 of the Curtis Act, having established an office in Muskogee for that purpose on April 1, 1899. The Creek Nation is unique in this respect, being the only tribe whose lands were allotted under the Curtis Act.

The Cherokees still refused to give their consent to any agreement that Congress would approve. An agreement was concluded between the Cherokee Commissioners and the Commission to the Five Civilized Tribes on January 14, 1899, which was ratified by the tribe January 31, 1899, but failed of ratification by Congress. A subsequent agreement ratified by Congress by Act of March 1, 1901, failed of ratification by the tribe, at an election held April 29, 1901. An agreement was finally negotiated which was adopted by Congress by Act of July 1, 1902, and ratified by the tribe August 7, 1902, and known as the Cherokee Agreement.

Three days after the passage of the Curtis Act, Congress by Act of July 1, 1898, adopted, without amendment the agreement concluded with the Seminoles on December 16, 1897, which thus became the first treaty with any of the tribes for the allotment of the land in severalty that was approved by both the United States and the tribe.



CHAPTER II

SUPREMACY OF CONGRESS OVER THE INDIANS.

Discovery.

of Indian Tribes to the United States.

with Indian Tribe not a Contract.

states Citizenship.

of Congress, Plenary.

By Discovery.—Upon its discovery by Europe, America was in the exclusive possession of the Indians, who lived in a state of barbarism, who lived by hunting and practiced agriculture only in a most limited and unimproved manner. To the minds of the Europeans, America was an unpeopled continent, and they found no difficulty in convincing themselves that the natives were amply compensated for the loss of their independence by the advantages of Christianity which they were able to acquire. Similarly the great nations of Europe lost no difficulty in appropriating to themselves such parts of the new world as they were able to acquire. But as each of these nations pursued the same object, it was necessary, to avoid war and contentions between themselves, to establish a principle governing such acquisition that was acknowledged and observed by them all. This principle was found in the doctrine that discovery gave the right of government by whose subjects, or by whose authority, was made, against all other European governments. Relations between the discoverer and the Indians in the unoccupied territory, did not concern the other nations and became a matter of policy for each nation to determine for itself.

By the nations, England, France, Spain and Holland, claims to parts of North America by virtue of discovery, the right of occupancy was recog-



§ 4

LANDS OF THE FIVE CIVILIZED TRIBES.

nized in the Indians, but the ultimate dominion and sovereignty of the soil was asserted in themselves. Each asserted as a corollary of its claim of ultimate dominion, exclusive prerogative to extinguish the Indians' right of occupancy and denied to all others the privilege of acquiring any interest in the soil by grant from the Indians.

As the result of the war by which the independence of America was achieved, the United States succeeded to the dominion, sovereignty and right which England theretofore had to the soil of America, except Canada, the rights of France and Spain were afterwards acquired by purchase. The title of the United States to the land occupied and claimed by the Indians is thus based upon conquest, but its validity is a political and not a judicial question, and the manner of its acquirement was recognized as legitimate by all of the civilized nations of the world. Chief Justice Marshall has summed up the question as follows:

"We will not enter into the controversy whether agriculturalists, merchants and manufacturers have a right, on abstract principles, to expel hunters from the territory to possess, or to contract their limits. Conquest gives a title which the courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be respecting the original justice of the claim which has been unsuccessfully asserted. The British government, which was then our government, and whose rights have passed to the United States, asserted a title to all of the lands occupied by the Indians within the chartered limits of the British colonies. It asserted also a limited sovereignty over them, the exclusive right of extinguishing the title which occupancy gave to them. These claims have been maintained and established as far west as the Mississippi River by the sword. The title to a vast portion of the land we now hold, originates in them. It is not for the courts of this country to question the validity of this title or to sustain one which is incompatible with it."¹

¹ Johnson v. McIntosh, 8 Wheaton 574, 5 L. Ed. 541; Cherokee Nation v. Georgia, 5 Peters 48, 8 L. Ed. 25.

§ 5. **Relation of Indian Tribes to United States.**—The relation of the Indian tribes to the United States has from the beginning been of an anomalous and complex character. Though they occupied territory within the boundaries of the United States they were not a political part of the United States.²

Each tribe constituted a distinct, independent, political community, exercising within its territory and with respect to its internal affairs, all of the powers of local self government and administering its own laws, customs and usages. It was, in every respect, a Nation, within the general acceptance of that term and capable of contracting treaties as such.³

But while the several tribes exercised all the attributes of sovereignty within their recognized tribal domains, they occupied territories to which a superior power asserted and maintained the ultimate dominion and the exclusive right to the soil upon the extinguishment of the right of occupancy conceded to the natives. The assertion of dominion by the United States was inconsistent with complete sovereignty in the Indian tribes, and the attempt of any foreign nation to enter into relations with them, or to acquire any interest in their lands, would be considered an invasion of the sovereignty of the United States and an act of hostility. By virtue of such claims of dominion, an Indian tribe was not, with respect to the United States, a foreign nation within the meaning of the provision of the Constitution giving the federal courts jurisdiction of controversies "between a State or citizens thereof, and foreign States, citizens or subjects," and it could not maintain a suit therein.⁴

² *In re Crow Dog*, 109 U. S. 556; 27 L. Ed. 1030.

³ *Worcester v. Georgia*, 6 Peters 575, 8 L. Ed. 483.

⁴ *Cherokee Nation v. Georgia*, 5 Peters 48, 8 L. Ed. 296; *Cherokee Nation v. Southern Kan. Ry. Co.*, 135 U. S. 641, 34 L. Ed. 295; *Cherokee Nation v. United States*, 179 U. S. 494, 45 L. Ed. 291; *United States v. Rogers*, 4 Howard 572, 11 L. Ed. 1105; *Jones v. Meehan*, 175 U. S. 1, 44 L. Ed. 49.

Full authority and sovereignty over the Indian tribes has been exercised by the Federal government through Congress from the beginning, varying in the extent of its application only by expediency or the power of the United States to enforce it. Such authority of the general government does not emanate from any particular section of the Constitution and is not derived from the provision granting it "power to regulate commerce with foreign nations, and among the several States and with the Indian tribes." It is much broader than that. It is an inherent one, arising from its political relations with those dependent people. This sovereignty of the government is exercised through Congress as the instrument established by the Constitution for the expression of its legislative will. Justice Miller in *United States v. Kagama*, has outlined the source of the authority of the Federal government over the Indian Tribes as follows:

"The power of the General Government over these remnants of a race, once powerful now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell. It must exist in that government because it never has existed anywhere else, because the theatre of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its law on all the tribes."⁵

The tribes were declared by Chief Justice Marshall in *Cherokee Nation v. Georgia*, to be in a "state of pupillage," and their relation to the United States to be that of a ward to his guardian. Such designation has been generally adopted by the courts as expressive of the authority of the United States over the Indian tribes, who are usually re-

⁵ *United States v. Kagama*, 118 U. S. 375, 30 L. Ed. 228; *Stephens v. Cherokee Nation*, 174 U. S. 445, 43 L. Ed. 1041.

erred to as "wards of the Nation," "pupils," "local dependent communities."

By reason of the relation between the United States and the tribes, the exercise of its authority is a political question, addressing itself solely to Congress and not subject to control by the courts. Congress has plenary power and authority over the tribes, tribal affairs and property when it sees fit to exercise it, and from the very nature of the relation, there is no authority above Congress that they can invoke.⁶

§ 6. **Treaty With Indian Tribe Not a Contract.**—It has been the practice of the United States from the beginning of the government to the present time to exercise its paramount authority over the Indians by treaties negotiated with the different tribes. Such treaties are not contracts and confer no vested rights upon the tribes which are within the protection of the Constitution. They are effective, not as treaties but as acts of Congress and do not impair the power of Congress to further legislate upon the same subject matter, even in violation of the terms of the treaties. Whatever may be the moral obligation to keep inviolate the treaties entered into with the Indian tribes, the sovereignty of the United States cannot be concluded by its

⁶United States v. Kagama, 118 U. S. 375, 30 L. Ed. 228; Cherokee Nation v. Southern Kan. Ry. Co., 135 U. S. 641, 34 L. Ed. 295; Choctaw Nation v. United States, 179 U. S. 494, 45 L. Ed. 291; Stephens v. Cherokee Nation, 174 U. S. 445, 43 L. Ed. 1041; United States v. Rogers, 4 Howard 572, 11 L. Ed. 1105; Ward v. Race Horse, 163 U. S. 504, 41 L. Ed. 244; *In re Crow Dog*, 109 U. S. 556, 27 L. Ed. 1030; *U. S. v. K. & T. Ry. Co. v. Roberts*, 152 U. S. 114, 38 L. Ed. 377; *Thomas v. Gay*, 169 U. S. 264, 42 L. Ed. 740; *Cherokee Nation v. Hitchcock*, 187 U. S. 298, 47 L. Ed. 183; *Lone Wolf v. Hitchcock*, 187 U. S. 553, 47 L. Ed. 299; *Tiger v. Western Investment Co.*, 221 U. S. 285, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *U. S. v. Fisher*, 224 U. S. 639, 56 L. Ed. 928; *Choate v. Trapp*, 224 U. S. 645, 56 L. Ed. 941; *Williams v. Johnson*, 239 U. S. 414, 60 L. Ed. 358.



own legislative enactments, should occasion arise for further exercise of its authority.⁷

Where, however, rights have vested in the individual distinct from the tribe, under a treaty or act of Congress such rights are within the protection of the Constitution and cannot be divested by subsequent act of Congress.

§ 7. **United States Citizenship.**—The Indian tribes were not a political part of the United States, and prior to March 3, 1901, the members of the Five Civilized Tribes were not citizens of the United States. By the General Allotment Act of February 8, 1887, every Indian within the United States to whom an allotment was made was declared to be a citizen of the United States with the rights, privileges and immunities thereof. The Five Civilized Tribes were excluded from the General Allotment Act, but by Act of March 3, 1901, Section 6 of that Act was amended by the insertion in the appropriate place of the words “and every Indian in Indian Territory.” By such amendment United States citizenship was bestowed upon all the members of the Five Civilized Tribes. They acquired State citizenship upon the admission of Oklahoma into the Union.⁹

§ 8. **Authority of Congress, Plenary.**—The plenary authority, often called guardianship, of Congress over

⁷ Lone Wolf v. Hitchcock, 187 U. S. 553, 47 L. Ed. 299; Cherokee Tobacco v. United States, 11 Wall. 616, 20 L. Ed. 227; United States v. Kagama, 118 U. S. 375, 30 L. Ed. 228; Choctaw Nation v. United States, 179 U. S. 494, 45 L. Ed. 291; Stephens v. Cherokee Nation, 174 U. S. 445, 43 L. Ed. 1041; United States v. Rogers, 4 Howard 11 L. Ed. 1105; Ward v. Race Horse, 163 U. S. 504, 41 L. Ed. 1105; Thomas v. Gay, 169 U. S. 264, 42 L. Ed. 740; Cherokee Nation v. Hitchcock, 187 U. S. 298, 47 L. Ed. 183; Tiger v. Western Investment Co., 221 U. S. 286, 55 L. Ed. 738; Gritts v. Fisher, 224 U. S. 640, 55 L. Ed. 928; Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941.

⁸ Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941; Jones v. Meehan, 175 U. S. 1, 44 L. Ed. 49.

⁹ Tiger v. Western Investment Co., 221 U. S. 285, 55 L. Ed. 738.

tribe, tribal affairs and tribal property, authorizes, with or without the consent of the tribe the dissolution of the tribe, the distribution and allotment of the tribal property and the imposition of such restrictions upon the alienation of the lands of the members, wherever and in such manner, as Congress may in its judgment deem expedient.¹⁰

The passage of the Act of June 28, 1898 (Curtis Act), was a valid exercise of the legislative authority of Congress over the Five Civilized Tribes.¹¹

And the authority of Congress to distribute and allot the lands of the tribes in severalty to the members thereof necessarily included the authority to ascertain and declare who should constitute the membership of the Tribes and share in the distribution of the land.¹²

And as a part of its plan of allotment in severalty and for the purpose of protecting the Indians in the enjoyment of their lands, it was authorized to impose upon the land of the individual members limitations or restrictions upon its alienability.¹³

Nor was its power exhausted when the land was allotted in severalty subject to the restrictions it had imposed. Such allottees, with respect to their allotted lands are still tribal Indians and subject to the guardianship of Congress until that guardianship shall be terminated by Congress itself; and it is for it to say when and under what conditions that guardianship shall cease. Accordingly, it has been held that the United States may maintain suits in its own name for the

¹⁰ *Lone Wolf v. Hitchcock*, 187 U. S. 553, 47 L. Ed. 299; *Cherokee Nation v. Hitchcock*, 187 U. S. 298, 47 L. Ed. 183; *Tiger v. Western Investment Co.*, 221 U. S. 285, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820.

¹¹ *Stephens v. Cherokee Nation*, 174 U. S. 445, 43 L. Ed. 1041; *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 47 L. Ed. 183.

Gritts v. Fisher, 224 U. S. 640, 56 L. Ed. 928.

Tiger v. Western Investment Co., 224 U. S. 286, 55 L. Ed. 738; *James v. Johnson*, 239 U. S. 414, 60 L. Ed. 358; *Brader v. James*, U. S. —, 62 L. Ed. 335.

purpose of enforcing the restrictions it has imposed upon the alienation of the lands of the allottees of the several Tribes.¹⁴

It may remove the restrictions prior to the expiration of the time originally prescribed.¹⁵ Or extend the restricted period beyond the original term.¹⁶ Or impose restrictions upon lands, which were at the time subject to unrestricted alienation.¹⁷ And such power in Congress is not inconsistent with United States citizenship in the Indians or affected by such citizenship.¹⁸

¹⁴ *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Deming Investment Co. v. United States*, 224 U. S. 471, 56 L. Ed. 847.

¹⁵ *Williams v. Johnson*, 239 U. S. 414, 60 L. Ed. 358.

¹⁶ *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Tiger v. Western Investment Co.*, 221 U. S. 285, 55 L. Ed. 738.

¹⁷ *Brader v. James*, — U. S. —, 62 L. Ed. 335.

¹⁸ *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Choate v. Trapp*, 224 U. S. 665, 56 L. Ed. 941; *Brader v. James*, — U. S. —, 62 L. Ed. 335.

CHAPTER III.

CHEROKEE—ALLOTMENT AGREEMENT.

- § 9. Only One Agreement.
10. Persons Participating in Allotment.
11. Intermarried Citizens.
12. Delawares.
13. Shawnees.
14. Freedmen.

§ 9. **Only One Agreement.**—The Cherokees were very much opposed to the allotment of their land in severalty, preferring the community ownership that then prevailed. Treaties were negotiated with representatives of the Creeks, Seminoles, Choctaws and Chickasaws prior to the passage of the Curtis Act, but no such agreement was reached with the Cherokees until some time after its passage.

The Commission began the making of a roll of membership of the Cherokee Tribe, under the Curtis Act and former acts of Congress, in May, 1900, but it did not, as in the case of the Creeks, make any allotment of land in the Cherokee Nation under the Curtis Act. The first allotments were made about January 1, 1903. On April 9, 1900, the Commission to the Five Civilized Tribes reached an agreement with the representatives of the Cherokee Nation at the City of Washington which was ratified by Congress March 1, 1901. The agreement was thereupon submitted to the Tribes and at an election held April 29, 1901, it was ratified by more than a thousand votes. A subsequent agreement was negotiated but was never passed by Congress.¹

The agreement under which the land of the Cherokees was allotted was adopted by Congress July 1, 1902, ratified

¹ *Idler v. Helms*, 150 Pac. 154.

by the members of the tribe August 7, 1902, and proclaimed August 12, 1902. There is but one agreement with the Cherokees and in construing the legislation under which the lands of that nation were allotted there is not presented, as in the case of the Creeks, Choctaws and Chickasaws, the perplexing questions as to whether the provisions of the first agreement were superseded by the terms of a later agreement. Upon the adoption of the Cherokee Agreement the provisions of the Curtis Act, except Sections 14 and 27 thereof, were no longer effective as to such nation. Section 14, *supra*, provided for the government of the cities and towns in the Indian Territory and had no application to the allotment of lands. Section 27, *supra*, authorized the appointment of an Indian Inspector in the Indian Territory. Section 73 of the Cherokee Agreement provided:

“The provisions of Section 13 of the Act of Congress, approved June 28, 1898, entitled ‘An Act for the protection of the people of the Indian Territory, and for other purposes,’ shall not apply to or in any manner affect the lands or other property of said tribe, and no act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation except Sections 14 and 27 of said last-mentioned act, which shall continue in force as if this agreement had not been made.”

§ 10. **Persons Participating in Allotment.**—By Section 21 of the Curtis Act, the Cherokee roll of 1880 was confirmed (except as to freedmen), and the Commission instructed to enroll all persons then living, whose names were found on that roll, and all persons born since the date of said roll to persons whose names were found thereon. This is the only roll of citizens of any of the Five Civilized Tribes which was confirmed in toto by Congress, except the Dunn Roll of Creek freedmen compiled in 1867.

The commission was further instructed by such section to include all persons who had been enrolled by the tribe

authorities and their descendants. The names of all persons who were found on any other roll than the Cherokee roll of 1880 were to be investigated and only those enrolled who proved themselves entitled thereto.

Section 27 of the Cherokee Agreement provided that a roll should be made by the commission in strict compliance with the above section of the Curtis Act and the Act of March 31, 1900. The Secretary of the Interior had prior to the adoption of the Cherokee Agreement, acting under authority of the Act of March 3, 1901, announced that the rolls of the Cherokees should be closed on July 1, 1902, and that no person dying prior to that time, or children born to Cherokee parents thereafter, should be enrolled as a member.

Sections 25 and 26 of the Cherokee Agreement, however, changed the date of the closing of the roll to September 1, 1902. Section 26 is as follows:

"The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in Section twenty-five hereof, shall be placed upon the roll made by said Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee citizen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation."

The Act of April 26, 1906, authorized enrollment of children who were minors living March 4, 1906, whose parents have been enrolled as members of the Cherokee tribe," or had application for enrollment pending at the time of the approval of said Act.

The commission classified and enrolled the members of Cherokee Nation who participated in the allotment of the lands of the tribe as follows:

Cherokees by blood: Cherokees by blood, minor children (Act April 26, 1906); Delaware Cherokees; Chero-

kees by intermarriage; Cherokee freedmen; Cherokee freedmen, minor children (Act of April 26, 1906).

The right of any citizen to enrollment as a member of the tribe is a political question and its determination by the United States or its administrative agents is conclusive and final and not subject to review by the courts.

§ 11. **Intermarried Citizens.**—Unlike the case of the Choctaws and Chickasaws, citizenship by intermarriage in the Cherokee Nation subsequent to November 1, 1875, did not carry with it the right of participation in the lands and funds of the tribe. By a law of the Cherokee Council, effective November 1, 1875, such right of participation was conferred on non-citizens intermarrying with members by blood of the tribe only upon compliance with the conditions of such act. This legislation bestowing right of participation upon citizens by intermarriage was repealed on November 28, 1877, and was taken advantage of in only a few instances. Only such citizens as intermarried with members of the tribe prior to November 1, 1875, or between that date and November 28, 1877, who complied with the terms and conditions of that Act, were entitled to receive allotments as intermarried citizens.²

§ 12. **Delawares.**—By the provisions of the treaty of August 11, 1866, between the United States and the Cherokee Nation, the United States secured the right to settle within the Cherokee Nation certain friendly Indians, upon such terms as could be agreed upon with the Cherokees. By virtue of such agreement, and a treaty with the Delaware Indians of Kansas, the United States arranged for the removal of the Delaware Indians to the Cherokee Nation. A contract was concluded between the Delawares and the Cherokees on April 8, 1867, by virtue of which nine hun-

² *Red Bird v. United States*, 203 U. S. 80, 51 L. Ed. 96; *Boudinot v. Morris*, 26 Okla. 768, 116 Pac. 894.

lred and eighty-five Delawares removed to the Cherokee Nation and were incorporated into the Cherokee Tribe. By such contract it was provided that, in case the Cherokee lands should thereafter be allotted in severalty, each Delaware, who may "elect to remove to the Indian country," all of whom were duly registered, was to receive one hundred sixty acres of land. The agreement further provided:

"On the fulfillment by the Delawares of the foregoing stipulations, all the members of the tribe, registered as above provided, shall become members of the Cherokee Nation, with the same rights and immunities, and the same participation (and no other) in the national funds as native Cherokees, save as hereinbefore provided.

"And the children thereafter born of such Delawares so incorporated into the Cherokee Nation, shall in all respects be regarded as native Cherokees."

By the said agreement the Delawares so removing and their descendants were incorporated into the Cherokee Tribe and become for all intents and purposes native Cherokees, with full right of participation in the lands, funds and annuities of said Tribe.³

§ 13. **Shawnees.**—Under the terms of the treaty concluded between the Shawnees and Cherokees on July 19, 1866, a number of Shawnee Indians settled in the Cherokee Nation and were incorporated into the tribe. By Section 15 of said treaty it was provided:

"That the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee Nation."

No separate roll was made of the Shawnees. They were included in the roll of Cherokees by blood and received

³ *Cherokee Nation v. Journeycake*, 155 U. S. 196, 39 L. Ed. 129, *Delaware Indians v. Cherokee Nation*, 193 U. S. 127, 48 L. Ed. 646.

allotments in the same manner and subject to the same restrictions as native Cherokees.⁴

§ 14. **Freedmen.**—Prior to 1866 the Cherokees were slaveholders. During the Civil War this nation, in common with the other nations of the Five Civilized Tribes, renounced its allegiance to the United States and adhered to the cause of the Southern Confederacy. By treaty with the Cherokees of August 11, 1866, slavery was forever abolished in the Cherokee Nation, the Proclamation of Emancipation, not having applied to the territories. The United States renewed its relations with such Indians and confirmed their right to their lands. As a condition of such confirmation, however, the Cherokees were required to adopt into their tribe their former slaves and free colored persons who were living in their country at the commencement of the war who were then residents therein, or who should return within six months.

Article 9 provided that such persons and their descendants "shall have all the rights of native Cherokees." Such freedmen participated equally with the members by blood of the tribe in the allotment of the land and were members of the tribe in every sense of the word. They were enrolled separately, however, and are not "Indians by blood."⁵

⁴ Cherokee Nation v. Blackfeather, 155 U. S. 218, 39 L. Ed. 126.

⁵ Lowe v. Fisher, 223 U. S. 95, 56 L. Ed. 364; United States v. Whitmire, 236 Fed. (CCA) 474; Turner v. Fisher, 224 U. S. 204, 56 L. Ed. 105.

CHAPTER IV.

TITLE OF CHEROKEES.

- § 15. Division and Reunion.
- 16. Title of Tribe.
- 17. Relinquishment by United States.
- 18. Title of Allottee.

§ 15. **Division and Reunion.**—At the time of the first treaty between the United States and the Cherokee Nation, concluded November 28, 1785, the Cherokees were one people, inhabiting a territory which is now embraced in the states of North and South Carolina, Georgia, Alabama and Tennessee. Between 1785 and 1817 the tribe had divided into the Eastern and Western Cherokees. The Western Cherokees, impatient of the encroachment of white settlers upon their hunting grounds, had emigrated to the country upon the Arkansas and White Rivers in what is now Arkansas. By treaty between the United States and the Western Band of Cherokees, concluded in the City of Washington on the 6th day of May, 1828, the said Indians ceded to the United States the lands in Arkansas guaranteed to them under the treaty of 1817. In consideration thereof the United States agreed "to possess the Cherokees and to guarantee it to them forever" a tract of land in the Indian Territory including the present land of the Cherokee Nation, for the benefit of the Cherokee Nation "as well as those now living within the limits of the Territory of Arkansas as of those of their friends and others who reside in states east of the Mississippi and who may wish to join their brothers in the west." The Western Cherokees in pursuance of said treaty emigrated and settled in the Cherokee Nation.

By the treaty of New Echota, concluded on the 29th day of December, 1835, between the United States and the Cherokee Tribe east of the Mississippi, in consideration of

five million dollars and the land guaranteed to the nation by the treaty of May 6, 1828, with the Western Cherokees, the tribe ceded to the United States their land east of the Mississippi and agreed to "remove to their new home" within two years from its ratification. The Eastern Cherokees manifested great reluctance to emigrate and it became necessary to send troops into their country to secure their removal. Between 1100 and 1200 were permitted to remain who thereupon ceased to be members of the nation and became citizens of the respective states. The others proceeded to the Indian Territory, where they were welcomed by the Western Cherokees and "an act of union between the Eastern and Western Cherokees" was duly passed by the Tribal Council on the 12th day of July, 1839. The tribe which had been divided by the emigration of the Western Cherokees was reunited in the country destined to be the home of the Cherokees as long as the tribal relations endured.¹

§ 16. **Title of Tribe.**—In pursuance of the undertakings and guarantees upon the part of the United States above mentioned, on the 31st day of December, 1838, a patent was duly issued to the Cherokee Nation reciting:

"The United States have given and granted and by these presents do give and grant unto said Cherokee Nation the two tracts of land so surveyed and hereinbefore described . . . to have and to hold the same, together with all the rights, privileges and appurtenances thereto belonging, to the Cherokee Nation forever."

This grant was made subject to certain rights reserved to the United States and to the following express conditions:

¹ Kappler's *Laws and Treaties*, Vol. 2, pp. 288 and 439; *Eastern Band of Cherokees v. United States*, 117 U. S. —, 29 L. Ed. 883; *Cherokee Nation v. Georgia*, 5 Peters 48, 8 L. Ed. 296; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Rider v. Helms*, 150 Pac. 154, 48 Okla. 610.

‘That the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandons the same.’

By the grant above mentioned and the treaties with the United States, the Cherokee Nation, as a political community, was vested with a base fee to the land in that nation, subject only to a reversionary interest in the United States upon the extinction of the tribe or their abandonment of it.²

§ 17. **Relinquishment By United States.**—By Section 15 of the Act of March 3, 1893, it was enacted by Congress:

‘The consent of the United States is hereby given to the allotment of lands in severalty, not exceeding one hundred acres to any one individual, within the limits of the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws and Seminoles, . . . and upon the allotment of the lands held by said tribes respectively, the reversionary interest of the United States therein shall be relinquished and shall cease.’

Section 59 of the Cherokee Agreement providing for the issuance of patents to the allottee under said treaty is as follows:

‘All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the allottee of all the right, title, and interest of the United States in and to the land embraced in his patent.’

§ 18. **Title of Allottee.**—By the allotment in severalty of the lands of such nation the reversionary interest of the United States therein was by such provisions extinguished. Section 58 of the Cherokee Agreement provided that the principal chief should execute and deliver to the allottee a

Cherokee Nation v. Southern Kansas Railroad Co., 135 U. S. 641, 10 L. Ed. 295; *Stephens v. Cherokee Nation*, 174 U. S. 445, 43 L. Ed. 1; *Cherokee Nation v. Hitchcock*, 187 U. S. 298, 47 L. Ed. 183; *Cherokee Nation v. Southern Kansas Railroad Co.*, 33 Fed. 900; *Wainwright v. Ince*, 56 Fed. (CCA) 12.



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patent conveying all the right, title and interest of the Cherokee Nation, and of all other citizens of the nation save himself, in and to the lands embraced in his allotment certificate.

Section 60 is as follows:

“Any allottee accepting such patent shall be deemed to assent to the allotment and conveyance of all the lands of the tribe as provided in this act, and to relinquish all his right, title, and interest to the same, except in the proceeds of lands reserved from allotment.”

Section 61 provides:

“The acceptance of patents for minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents as to the conveyance of all other lands of the tribe.”

By allotment in severalty of the land of the nation, the allottee was vested with all the right, title and interest of the United States and of the Cherokee Nation and its citizens in and to the land selected for allotment. His title was a fee simple one, subject only to restrictions upon alienation.³

The inalienability of the lands allotted does not affect the quality of the estate granted and is not inconsistent with the fee simple title.⁴

³ Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834; *In re Five Civilized Tribes*, 199 Fed. (D.C.) 811; Choate v. Trapp, 224 U. S. 650, 56 L. Ed. 941.

⁴ Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; Noble v. United States, 237 U. S. 74, 59 L. Ed. 844; Tiger v. Western Investment Co., 221 U. S. 286, 55 L. Ed. 738; Chase v. United States, 221 Fed. (CCA) 593; Western Investment Co. v. Tiger, 21 Okla. 630, 101 Pac. 602.

CHAPTER V.

CHEROKEE—ALLOTMENT.

- § 19. Standard Allotment.
- 20. Homestead—Surplus.
- 21. Allotment Certificate.
- 22. Patent.
- 23. When Title Vests.
- 24. No Assignable Interest Prior to Selection.

§ 19. **Standard Allotment.**—Under authority of Section 11 of the Cherokee Agreement there was allotted to each member of the nation (except registered Delawares), land equal in value to one hundred ten acres of the average allottable land of the nation. Section 9 provided for the appraisement by the commission so as to permit each allottee to receive land equal in value.

Registered Delawares were those Delawares who emigrated to the Cherokee Nation and were incorporated into the Cherokee tribe under the terms of the contract of April 8, 1867. The term includes only those who actually took part in the emigration and does not include their descendants. By the terms of the contract it was provided that, in case of subsequent allotment of the land of the Cherokees, such Delawares should receive one hundred and sixty acres of land. By Section 23 of the Cherokee Agreement the rights of such Delawares were referred to the Court of Claims with right of appeal to the Supreme Court of the United States. In case of *Delaware Indians v. Cherokee Nation*, 193 U. S. 127; 48 L. Ed. 646, the Supreme Court upheld the claim of the registered Delawares and they were accordingly allotted one hundred 'sixty acres of land each.

§ 20. **Homestead—Surplus.**—By Section 13 of the Cherokee Agreement it was the duty of each member at the time of the selection of his allotment to designate as a

homestead out of said allotment, land equal in value to forty acres of the average allottable land of the Cherokee Nation. Separate certificate of allotment was issued for the homestead and a difference was made in the restrictions upon alienation between such homestead and the balance of the allotment.

By Section 16 if for any reason an allotment should not be selected, or a homestead designated, by or on behalf of any member of the tribe, it was the duty of the commission to make said selection and designation. There was no name applied to that part of the allotment remaining after the designation of the homestead. It has, however, been universally called "surplus," and the words "homestead" and "surplus" in the text books and decisions of the courts have acquired a clear and well defined meaning.

§ 21. **Allotment Certificate.**—Under the rules promulgated by the Commission to the Five Civilized Tribes, it was the duty of the applicant to apply at the office of the commission for the purpose of filing upon the land selected for his allotment. Provision was made, both in the Cherokee Agreement and in the rules and regulations of the commission, for the selection by guardian upon behalf of minors and incompetents.

Section 6 provides:

"The word 'select' and its various modifications as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Dawes Commission for the Cherokee Nation, for the particular tracts of land."

Section 69 of the Cherokee Agreement provided that after the expiration of nine months from the date of the original selection of an allotment by or on behalf of any citizen, no contest should be instituted against such selection.

The rules and regulations of the commission provided for the issuance of allotment certificates after the expiration of nine months from the selection of allotments, in case no contests were filed, or upon the termination of such contests and the expiration of the time provided for appeal. This departmental regulation had become a recognized part of the machinery of allotment in all the Five Civilized Tribes and, although there is no express provision in the Cherokee Agreement in regard to the manner in which certificates of allotment should be issued, the rules of the commission in this respect were so well understood that the date of the issuance of the certificate of allotment was made the time for computing the restricted period upon the homestead. The practice of the commission in issuing allotment certificates was fully recognized by Section 69 above mentioned and Section 21, which is as follows:

"Allotment certificates issued by the Dawes Commission shall be conclusive evidence of the right of an allottee to the tract of land described therein. . . ."

It is well settled that an allotment certificate when issued, like a patent, is dual in its effects. It is an adjudication of the special tribunal empowered to decide the question that the party to whom it is issued is entitled to the land, and it is a conveyance of the right to this title to the allottee.¹

Only certificates, however, which were regularly issued in accordance with law were intended to be made conclusive of the right of the allottee under Section 21. Such effect was not given to those issued by mistake, inadvertence or misconstruction of the law.²

An allotment certificate, however, is merely evidence of the right of the holder to the selection and allotment of land therein described; it bestows no right of itself.

¹Wallace v. Adams, 143 Fed. (CCA) 716; Bowen v. Carter, 42 Okla. 565, 144 Pac. 170; Frame v. Bivens, 189 Fed. (CC) 785; Thompson v. Hill, 48 Okla. 304, 150 Pac. 203.

²O'Quinn v. Joiner, 166 Pac. 142.

Upon the formal selection, in accordance with the rules of the commission, and after the expiration of the nine months period within which a contest might be filed, the right to any particular land as an allotment became absolute, and the allottee having done all that the law required to entitle him to the land selected as his allotment, thereafter the duty of executing and issuing allotment certificates and patents, which convey the legal title, was ministerial and may be enforced by mandamus.³

Although the certificate of allotment is conclusive that the party to whom it is issued is entitled to the land as an allotment, it was within the power of the Secretary of the Interior, as to the allottee, or his heirs or privies, upon proof of fraud or mistake in its issuance, upon notice, to cancel such certificate; also to strike the name of such holder from the rolls upon proof that he had been enrolled through fraud or mistake, and to cancel such certificate.⁴

By agreement between the commission and the allottee where the right of third parties had not intervened, the selection of lands for which certificates had issued might be set aside, the certificate cancelled, and the allottee permitted to make selections elsewhere.⁵

When, however, third parties relying upon the evidence of title, and without knowledge of the fraud by which the allotment had been secured, having paid their money in good faith, the name of the allottee cannot be stricken from the rolls, or the allotment certificate of patent cancelled to their detriment.⁶

³ Ballinger v. Frost, 216 U. S. 240, 54 L. Ed. 464; United States v. Dowden, 220 Fed. (CCA) 277; Frame v. Bivens, 189 Fed. (CC) 71; Thomason v. Wellman & Rhoades, 206 Fed. (CCA) 895; United States v. Whitmire, 236 Fed. (CCA) 474; White v. Starbuck, 41 Ok. 50, 133 Pac. 223.

⁴ Lowe v. Fisher, 223 U. S. 95, 56 L. Ed. 364.

⁵ United States v. Dowden, 194 Fed. (CC) 475.

⁶ United States v. Wildcat, 224 U. S. 111, 37 Supt. Ct. Rep. 50; United States v. Whitmire, 236 Fed. (CCA) 474; United States v. Marshall, 210 Fed. (CCA) 595; United States v. Jacobs, 195 Fed. (CCA) 707.

Nor, under such circumstances, can the allottee relinquish his filing and make another selection in order to defeat the interests of third parties who have acquired rights in the lands selected.⁷

It has been held, however, that in the event of the cancellation of the allotment for any cause, lands selected in lieu thereof, were not affected by conveyances executed with respect to the land first allotted.⁸

§ 22. **Patent.**—By Section 58 it was provided that when the right of any allottee to his allotment had been so ascertained and fixed, the principal chief should thereupon proceed to execute and to deliver to the allottee a patent, furnished by the Secretary of the Interior, conveying all the right, title and interest of the Cherokee Nation, and all her citizens, in and to the lands embraced in the allotment certificate. The delivery of the patent is the last act consummation of the allotment of the land in severalty, and conveys to the allottee the legal title to the land.

By Section 59 such patent was required to be approved by the Secretary of the Interior. In regard to the cancellation and other matters of a similar nature, the patent is governed by the same rules that are applicable to certificate of allotment.

§ 23. **When Title Vests.**—Upon the selection of the land by an allotment by a member of the tribe, in accordance with the rules of the Commission, the allottee was vested with an equitable title to the land so selected which, in the absence of restrictions upon its alienation, would support conveyance.⁹

⁷United States v. Whitmire, 236 Fed. (CCA) 474; United States v. Dowden, 194 Fed. (CC) 475.

⁸Mullen v. Perkins, 155 Pac. 871; Mullen v. Gardner, 156 Pac. 1160. ⁹Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834; Ballinger v. United States, 216 U. S. 240, 54 L. Ed. 464; Gritts v. Fisher, 224 U. S. 640, 56 L. Ed. 928; Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; United States v. Dowden, 220 Fed. (CCA) 277.

And was sufficient to enable allottee to maintain an action of ejectment for the land.¹⁰

And upon removal of such restrictions thereafter the land was alienable, although no patent had issued.¹¹

And the fact that the application was subject to contest during the period of nine months in no way affected the equitable interest in the land so selected. The patent issued subsequently by relation became effective as of the date of the selection.¹²

§ 24. **No Assignable Interest Prior to Selection.**—Prior to the selection of his allotment and the segregation of the selected land from the public domain of the nation, a member entitled to allotment had no right or interest that was subject to conveyance. As stated by the Supreme Court of the United States in the case of *Franklin v. Lynch*, 233 U. S. 269:

“The distinction between an allottee and a member is not verbal but was made in recognition of a definite policy in reference to their land. As the tribe could not, neither could the individual member, prior to selection, make a valid contract of conveyance of any interest in the tribal land, for he had neither an undivided interest in such tribal land nor a vendible interest in any particular tract.”

Therefore, a deed to unsegregated land of the tribe, in anticipation of its selection as an allotment, is void, as is also the attempted conveyance, before selection, of the Indian right of participation in the allotment of the lands of the nation, as against governmental policy.¹³

¹⁰ *Sorrels v. Jones*, 26 Okla. 569, 110 Pac. 743.

¹¹ *Benadnum v. Armstrong*, 44 Okla. 637, 146 Pac. 34.

¹² *Thomason v. Wellman & Rhoades*, 206 Fed. 895; *Godfrey v. Iowa Land & Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Wood v. Gleason*, 43 Okla. 9, 140 Pac. 418.

¹³ *Franklin v. Lynch*, 233 U. S. 269, 58 L. Ed. 954; *Gritts v. Felt*, 224 U. S. 640, 56 L. Ed. 928; *Goat v. United States*, 224 U. S. 451.

And a provision in a deed by the heirs of an allottee whose selection had been made after his death by an administrator, that if for any reason the allotment should be canceled, the conveyance should be effective as to any lands selected in lieu of the lands conveyed, was void and conveyed no interest in such lands.¹⁴

Nor did a member before selection of his allotment have any right or interest that he could devise by will (see *ills*).

Such contract of conveyance before selection, being against governmental policy, subsequently acquired title, allotment, to the land attempted to be conveyed, will not inure to the benefit of the vendee, under Section 642, Chapter 27, Mansfield's Digest of the Statutes of Arkansas, in force in the Indian Territory prior to Statehood, which provided:

"If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such land, but shall afterwards acquire the same, the legal or equitable estate afterwards acquired shall immediately pass to the grantee and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance."¹⁵

Nor will the allottee be estopped by his covenant of warranty contained in deed made prior to selection of allotment.¹⁶

Ed. 841; *McKee v. Henry*, 201 Fed. (CCA) 74; *McWilliams Inv. v. Livingston*, 22 Okla. 884, 98 Pac. 914; *Godfrey v. Iowa Land Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Casey v. Bingham*, 37 Okla. 4, 132 Pac. 663; *Lynch v. Franklin*, 37 Okla. 60, 130 Pac. 599.

¹⁴*Mullen v. Gardner*, 156 Pac. 1160; *Robinson v. Caldwell*, 55 Okla. 1, 155 Pac. 547; *Mullins v. Pickens*, 155 Pac. 871.

¹⁵*Bledsoe v. Wortman*, 35 Okla. 261, 129 Pac. 841; *Berry v. Summers*, 35 Okla. 426, 130 Pac. 152; *Franklin v. Lynch*, 233 U. S. 269, 58 Ed. 954; *Robinson v. Caldwell*, 55 Okla. 701, 155 Pac. 547; *Vann Adams*, 164 Pac. 113.

¹⁶*Starr v. Long Jim*, 227 U. S. 613, 57 L. Ed. 613; *Monson v. Simon*.



§ 24

LANDS OF THE FIVE CIVILIZED TRIBES.

While a contract to convey made before allotment is void and cannot be enforced, it is not illegal nor immoral, a deed made after allotment in pursuance of a contract entered into before allotment, is valid.¹⁷

son, 231 U. S. 341, 58 L. Ed. 260; *Berry v. Summers*, 35 Okla. 130 Pac. 152.

¹⁷ *Casey v. Bingham*, 37 Okla. 484, 132 Pac. 663.

CHAPTER VI.

CHEROKEE—RESTRICTIONS UPON ALIENATION.

ALLOTTED LAND.

- § 25. Scope of Title.
- 26. Homestead.
- 27. Surplus.
- 28. Voluntary Alienation Comprehended by Restrictions.
- 29. Involuntary Alienation.
- 30. Removal of Restrictions Did Not Affect Exemption.
- 31. Effect of Transaction in Violation of Restrictions.
- 32. Ratification.
- 33. Recovery of Consideration.
- 34. Act of April 21, 1904.
- 35. Minors.
- 36. Involuntary Alienation.
- 37. Act of April 26, 1906.
- 38. Status of Allotted Land Prior to Act of May 27, 1908.

§ 25. **Scope of Title.**—Allotted land is the land that was selected by or patented to an allottee as his proportionate part of the common domain of the tribe of which he was a member. The term "inherited land" is used to denote such land as came to an heir, not by reason of his membership in the tribe, but by reason of devise or inheritance from an allottee. It is important to keep this distinction in mind, as the restriction applicable to them are very dissimilar. The present chapter is devoted to a consideration of restrictions upon allotted land.

The restrictions which were imposed upon the lands of the Cherokees were contained in the Cherokee Agreement. Unlike the other nations of the Five Civilized Tribes, there is but one treaty in force in the Cherokee Nation. The restrictions applied to all members to whom allotments were made equally. No distinction was made in the allotment as far as the restrictions upon alienation were concerned,

between such allottees. Native Cherokees, Delaware, Shawnees, adopted citizens, freedmen, and intermarried white citizens, were all members of the tribe and received their allotments of land subject to the same restrictions upon its alienation. Indian blood and the quantum thereof is important in considering subsequent legislation of Congress, but is immaterial in considering the restrictions upon alienation imposed by the Cherokee Agreement.

The Cherokee Agreement was the last of the treaties with the Five Civilized Tribes to be negotiated or adopted, and it is natural that its construction should reflect the experiences of the Commission, under former treaties with other tribes designed to accomplish approximately the same end. The general form and construction of the Cherokee Treaty agrees almost identically with the Choctaw-Chickasaw Supplemental Agreement, the only departure occurring with reference to fundamental differences in the conditions peculiarly applicable to the two tribes.

In regard to the restrictions upon alienation which it imposed, however, such treaty approximated very closely those embodied in the Creek Agreements.

§ 26. **Homestead.**—By Section 13 provision was made for the designation of a homestead out of the allotment consisting of land equal in value to forty acres of the average land of the nation.

The requirement that the homestead be designated necessarily resulted in the division of the allotment into two parts: the homestead, and that part of the allotment remaining after the designation of the homestead. The latter has acquired the name of "surplus." By said section the homestead was inalienable during the life-time of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. It is clear that the homestead under this section was inalienable for twenty-one years from the date of the certificate of allotment, provided the allottee lived that long, and alienable thereafter. In case

the death of the allottee before the expiration of the twenty-one years, it was alienable by his heirs upon his death. The homestead was further exempted from taxation or forced sale for any debt contracted while held by the allottee.

Section 14 provided:

"Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act."

It will be observed that the language "lands allotted to citizens" is broad enough to include the homestead for which restrictions were provided in Section 13. A construction applying the provisions of Section 14 to the homestead would result in that part of the allotment being subject to the restrictions mentioned in both Sections 13 and 14 during the five years from the date of the ratification of the Cherokee Agreement, and subject to the restrictions prescribed in Section 13 only, from that time until the death of the allottee, or twenty-one years from the date of the certificate of allotment. And this construction has been adopted by the Circuit Court of Appeals for the 8th Circuit.¹

The Creek Agreement contains the identical sections which have been before the courts several times, and the State Supreme Court seems committed to the construction that applies the restrictions of both sections to the homestead.

The provisions of the Cherokee Agreement with reference to restrictions applicable expressly to the homestead and surplus differ in other respects than the period of limitation. In this regard such agreement is unlike the Choctaw-Chickasaw Treaty where the only difference is in

¹United States v. Holsell, 247 Fed. (CCA) 390; Truskett v. Closser, 198 Fed. (CCA) 835.

the duration of restriction. It is, however, in accordance with the Creek Treaty in this particular. With reference to voluntary alienation, the only limitation contained in Section 13 consists in the use of the phrase "shall be inalienable" which is synonymous with the wording of Section 14, "shall . . . not be alienated." The exemption from forced sale or incumbrance in Section 14, while more elaborate and in greater detail, does not seem to be more comprehensive. There might be some question under Section 14, whether after the expiration of the five-year period, the land might not be sold to satisfy a debt or obligation contracted prior thereto. It has been held, however, that such section exempts such lands from forced sale upon any obligation contracted prior to the expiration of the restricted period.²

§ 27. **Surplus.**—Whether Section 14 applies to the homestead is open to some doubt, but there is no question that it applies to the surplus, and together with Section 15 contains the restrictions upon alienation applicable to that division of the allotment.

Section 15 is as follows:

"All lands allotted to the members of said tribe except such lands as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of patent."

It will be observed that the two sections are not identical with reference to the beginning and, therefore, the ending of the restricted period. Section 14 prohibits the alienation "before the expiration of five years from the date of the ratification of this act." Section 15 provides that such land "shall be alienable in five years after issuance of patent." The two dates are not identical, no patents having been issued for several years subsequent to the ratification.

² *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washington's Estate*, 36 Okla. 559, 128 Pac. 1079.

the act. Both the State and Federal courts, as well as the Assistant Attorney General of the United States, have held, in construing the two sections that the restricted period extended for five years from the date of the patent.³

§ 28. Voluntary Alienation Comprehended By Restrictions.—The prohibition against voluntary alienation applies to any attempted conveyance or incumbrance of the fee or any lesser interest or estate, corporeal or incorporeal, flowing out of or incidental to the ownership thereof. It includes sale; gift;⁴ option to purchase;⁵ mortgage;⁶ contract of sale;⁷ power of attorney;⁸ sale of timber on land, except when the sale of timber is merely incidental to putting the land in cultivation;⁹ will (see Wills); oil and gas lease (see Oil and Gas Leases); agricultural lease (see Agricultural Leases); assignment of royalties due under mining claim (see Oil and Gas Leases); assignment of rents and profits of lease for agricultural purposes.¹⁰

§ 29. Involuntary Alienation.—The restrictions upon alienation protect the lands of the allottee not only against voluntary alienation, but against involuntary sale, lien or incumbrance upon any obligation contracted during the restricted period.

Section 13 of the Cherokee Agreement in regard to the homestead provides:

"During the time said homestead is held by the allottee,

³ Opinions of Attorney General, page 354; *Truskett v. Closser*, 184 Fed. (CCA) 835; *Harris v. Hart*, 151 Pac. 1088; *Allen v. Oliver*, 50 Okla. 356, 121 Pac. 226.

⁴ *Keil v. Jones*, 51 Okla. 639, 151 Pac. 845.

⁵ *Barnes v. Stonebraker*, 28 Okla. 75, 113 Pac. 903.

⁶ *Cornelius v. Yarbrough*, 44 Okla. 375, 144 Pac. 1030; *Butterfield v. Butler*, 50 Okla. 381, 150 Pac. 1078.

⁷ *Harper v. Kelley*, 29 Okla. 809, 120 Pac. 293.

⁸ *Shoat v. Oliver*, 46 Okla. 683, 148 Pac. 709.

⁹ *Bettes v. Brower*, 184 Fed. (DC) 342; *Mitchell-Crittenden Tie Co. v. Crawford*, 160 Pac. 917.

¹⁰ *Childers v. Childers*, 157 Pac. 948.

the same shall be non-taxable and shall not be liable for any debt contracted by the owner thereof while so held by him."

Section 14 of the Cherokee Agreement is as follows:

"Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act."

Such provisions are dual in their effect. They constitute a restriction upon voluntary alienation and in addition partake of the nature of an exemption.¹¹

By virtue of said sections, the lands of an allottee are protected from all manner of involuntary lien or encumbrance contracted during the restricted period; and upon his death descend to his heirs free from all such debts or obligations.¹²

And the sale of the lands of an allottee, by his administrator for the purpose of paying debts contracted by him during the restricted period, is void and confers no rights upon the purchaser.¹³

Such lands are not affected nor can they be taken or sold upon judgment founded on contract¹⁴ or tort.¹⁵ They cannot be subjected to any kind of lien by order of court.

¹¹ *Western Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 588; *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washington's Estate*, 36 Okla. 559, 128 Pac. 1079.

¹² *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washington's Estate*, 36 Okla. 559, 128 Pac. 1079; *In re Davis' Estate*, 32 Okla. 209, 122 Pac. 547; *Redwine v. Ansley*, 32 Okla. 317, 122 Pac. 67; *Choctaw Lumber Co. v. Coleman*, 156 Pac. 222; *Eastern Oil Co. v. Harjo*, 157 Pac. 921; *Barnard v. Bilby*, 171 Pac. 50.

¹³ *Eastern Oil Co. v. Harjo*, 157 Pac. 921; *In re French's Estate*, 45 Okla. 819, 147 Pac. 319.

¹⁴ *Western Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 588.

¹⁵ *Mullen v. Simmons*, 234 U. S. 192, 58 L. Ed. 1274; *Choctaw Lumber Co. v. Coleman*, 156 Pac. 222.

¹⁶ *Tiger v. Reed*, 159 Pac. 499.

l a judgment of partition or one decreeing a lien in a suit alimony is null and void.¹⁷ They are not subject to marital men's lien,¹⁸ nor to lien of occupying claimant under Act 4933, Rev. Laws 1910.¹⁹ And such exemptions extended not only to the land itself, but to the rents and profits accruing therefrom.²⁰

§ 30. **Removal of Restrictions Did Not Affect Exemption.**—From the dual nature of the restrictions upon alienation it has been held that a removal of restrictions by the Secretary of the Interior was effective only as to voluntary alienation, and that the exemption from forced sale would remain unless expressly made a part of the order of removal.²¹

A like effect has been given to the Act of April 21, 1904. That Act removed the restrictions upon the voluntary alienation of the surplus allotments of members not of Indian blood, but left unimpaired the exemption against involuntary alienation theretofore in effect.²²

§ 31. **Effect of Transaction in Violation of Restrictions.**—The Creek Supplemental Treaty contains the following provisions:

"Section 16. Any agreement or conveyance of any kind or character, violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

The Cherokee Agreement contains no such provision and there is no language declaring such contracts or transactions

Childers v. Childers, 163 Pac. 948; *Burney v. Burney*, 160 Pac.

Wel v. Ingersol, 27 Okla. 117, 111 Pac. 214.

Gravens v. Amos, 166 Pac. 140.

Childers v. Childers, 157 Pac. 938, 163 Pac. 948; *Burney v. Burney*, 160 Pac. 85; *Redwine v. Ansley*, 32 Okla. 317, 122 Pac. 679.

Western Investment Co. v. Kistler, 22 Okla. 222, 97 Pac. 588.

Marce Davis' Estate, 32 Okla. 209, 122 Pac. 547.

tions void. The expressed governmental policy, however, in allotting the lands of the tribe in severalty was to make such lands subject to certain restrictions upon alienation for definite periods, and such contracts or conveyances, being in contravention of such policy, are absolutely void.²³

The Supreme Court of Oklahoma in construing the Choctaw-Chickasaw Treaties has held in several cases, following *Sayer v. Brown*, 7 Ind. Ter. 675, 104 S. W. 877, decided by the Court of Appeals of the Indian Territory, that contracts and conveyances in violation of the restrictions imposed by those treaties were not only void, but illegal.²⁴

The same court in construing the Creek Treaty has held that such contracts, while void, were not illegal.²⁵

The Creek Treaties contain more drastic provisions against alienation than the Choctaw-Chickasaw Treaties and no valid reason can be suggested for declaring contracts, in violation of the latter, illegal, that would not apply to those in violation of the former. The Supreme Court of the United States has many times considered transactions in violation of restrictions imposed under various treaties and, while it has invariably declared them void either as violative of express provisions or of governmental policy, it is not believed they have ever been held to be illegal.

In *Heckman v. United States*, 224 U. S. 412, 56 L. Ed. 820, involving the construction of the Cherokee Treaty that court declared transactions in violation of its restrictive provisions void as violative of governmental policy and in so holding expressly announced that the consideration received by the allottee might be recovered upon

²³ *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Gonzales v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Monson v. Simonson*, 224 U. S. 341, 58 L. Ed. 260; *Starr v. Long Jim*, 227 U. S. 613, 57 L. Ed. 613; *Oates v. Freeman*, 157 Pac. 74.

²⁴ *Lewis v. Clements*, 21 Okla. 167, 95 Pac. 769; *Howard v. Farnham*, 28 Okla. 490, 114 Pac. 695.

²⁵ *Tate v. Gaines*, 25 Okla. 141, 105 Pac. 193.

judiation of the transaction. It declined, however, to make the return of the consideration a condition of the cancellation of the conveyance. It is believed that this is a clear recognition by the court that the contract, while void so far as it attempted to accomplish alienation of the allotted lands in violation of the restrictions, was not immoral or illegal, and that the consideration received by the lottee might be recovered, provided recourse were not had against the restricted land. To permit the latter would bring about indirectly the very alienation it was the purpose of Congress to prevent. Under well established principles, had the transaction been adjudged illegal the court would have interposed such illegality as a bar to the recovery of the consideration. The Supreme Court of the State construing the Osage Allotment Agreement has held that possession under a lease made in violation of its restrictions would support an action for damages to planted crops,²⁶ or meadow.²⁷

And that an allottee under such circumstances was not justified in unlawfully taking possession of the crops and converting the same to his own use.²⁸

The question of the effect of transactions in violation of restrictions under the Cherokee Agreement, whether void or illegal, has not yet been passed upon directly by the courts and until such time it must remain an open one.

§ 32. **Ratification.**—Whether transactions in violation of restrictions on alienation are merely void or are illegal is very material in determining the effect upon such transactions of an attempted ratification and affirmation after the disability has been removed. If the contract is not unlawful, the consideration therefor would support a subsequent conveyance. If it is unlawful, a subsequent ratifica-

²⁶ Holden v. Lynn, 30 Okla. 663, 120 Pac. 246.

²⁷ Midland Valley Railroad Co. v. Lind, 38 Okla. 695, 135 Pac. 370.

²⁸ Burns v. Malone, 37 Okla. 40, 130 Pac. 278.

tion or adoption would be tainted with the original illegality and would render the subsequent transaction void.

Decisions construing the Creek Treaty are not authorities for the construction of the Choctaw-Chickasaw or Cherokee Agreements, for the reason that by express provisions of the Creek Agreements, such transactions or contract are not susceptible of ratification.

§ 33. **Recovery of Consideration.**—The question of the recovery of the consideration paid, upon the repudiation of the transaction by the owner of the restricted land, depends also upon the nature of the act in violation of restrictions. If the act is illegal the consideration cannot be recovered. If it is merely void, it seems clear it would be recoverable in an action for money had and received, without recourse, however, against the restricted land. It has been held that the consideration may be recovered in construing the Creek Agreements.²⁹

While a different conclusion was reached under the Choctaw-Chickasaw Treaties.³⁰

§ 34. **Act of April 21, 1904.**—Under the law by which the lands of the Cherokees were allotted in severalty, and disregarding subsequent legislation, the land other than the homestead, allotted to each member of said nation, was subject to unrestricted alienation after the expiration of five years from the 7th day of August, 1902, the date of the ratification of the Cherokee Agreement, or at the expiration of five years from the date of patent.

On April 21, 1904, Congress enacted as follows:

“And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions

²⁹ *Tate v. Gaines*, 25 Okla. 141, 105 Pac. 193.

³⁰ *Howard v. Farrar*, 28 Okla. 490, 114 Pac. 695; *Sayer v. Brown*, 7 Ind. Ter. 675, 104 S. W. 877.

on the alienation of all other allottees of said Tribes, except minors, and except as to homestead, may, with the approval of the Secretary of the Interior, be removed under his rules and regulations as the Secretary of the Interior may prescribe. . . ."

The effect of the act was to render the surplus allotments of all adult non-Indian citizens free from any restrictions upon their voluntary alienation. They were thereby authorized to convey the fee or any lesser estates therein. It was applicable to all citizens who were not Indians by blood and included intermarried whites, freedmen and adopted citizens not of Indian blood.³¹

The word "allottee" used in said act signifies a member of the tribe to whom an allotment had been made or who had selected such allotment. The act did not apply to one who had not made his selection, although a member belonging to the class whose allotment, if selected, would be in virtue of the above act free from restrictions on alienation. Prior to selection of allotment, notwithstanding the passage of said act, he was powerless to make a valid contract of conveyance.³²

§ 35. **Minors.**—The act specifically excepted minors from its operation. It was only by reason of their minority and inexperience that they were excepted from the provisions that applied to adult members of their class. Upon attaining their majority, after the passage of said act, the reason for their exclusion was removed. It has therefore been held that the restrictions were removed by said act

Landrum v. Graham, 22 Okla. 458, 98 Pac. 432; *Casey v. Bing*, 37 Okla. 484, 132 Pac. 663; *Sharp v. Lancaster*, 23 Okla. 349, 98 Pac. 578; *Elred v. Okmulgee Loan & Trust Co.*, 22 Okla. 742, 98 Pac. 929; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *United States v. Jacobs*, 190 Fed. (CCA) 707.

Franklin v. Lynch, 233 U. S. 269, 58 L. Ed. 954; *Parkinson v. Lynch*, 33 Okla. 813, 128 Pac. 131; *Lynch v. Franklin*, 37 Okla. 60, 98 Pac. 599.

upon the surplus allotments of non-Indian members, were minors at the time of its passage, upon their attaining their majority thereafter.³³

§ 36. **Involuntary Alienation.**—The above act in removing the restrictions upon voluntary alienation did not affect the exemption against involuntary alienation provided in Sections 13 and 14 of the Cherokee Agreement. At the passage of said act, as before, the surplus lands of adult non-Indian allottees were protected against any manner of forced sale or incumbrance contracted prior to the time the land could have been alienated under the treaty.

§ 37. **Act of April 26, 1906.**—After the Act of April 1904, no further acts of Congress removing restrictions upon allotted lands were passed until the Act of May 1908. The Act of April 26, 1906, removed restrictions upon inherited lands, but not upon allotted lands. On the other hand, the last mentioned act extended the restrictions upon both surplus and homestead lands of all blood Indians, and abolished the difference in respect to restricted periods that had theretofore obtained between the two divisions of the allotment.

Part of Section 19 of the Act of May 26, 1906, is as follows:

“That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress.”

³³ United States v. Shock, 187 Fed. (CC) 862, 870; Charles v. Thompson, 44 Okla. 380, 144 Pac. 1033; Smith v. Bell, 44 Okla. 370, 144 Pac. 1058; Thraves v. Greenlees, 42 Okla. 764, 142 Pac. 1021.

³⁴ *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *Western Co. v. Kistler*, 22 Okla. 222, 97 Pac. 588.

The constitutionality of the extension of the restricted period when the land was at the time already subject to restrictions is well settled.³⁵

The restrictions upon none of the allotted land of the Cherokee Nation had expired on April 26, 1906, and it is therefore clear that Congress had authority to enlarge such restricted period. The passage of such act rendered the allotted lands, both surplus and homestead, of full-blood Cherokee Indians inalienable until April 26, 1931.

§ 38. Status of Allotted Land Prior to Act of May 27, 1906.—The surplus allotments of all adult members, not of Indian blood, were alienable after April 21, 1904.

The surplus allotments of minor allottees, not of Indian blood, were alienable after such allottees attained their majority after April 21, 1904.

The surplus allotments of allottees of Indian blood, less than full blood, were alienable in five years after issuance of patent. It is not believed that such period had in any case expired before July 27, 1908.

The Secretary of the Interior was authorized by the Cherokee Agreement and Act of April 21, 1904, to remove restrictions upon alienation of the surplus allotments of all allottees, except minors; upon the removal of restrictions in accordance with the regulations of the Department, the land was thereafter subject to unrestricted sale.

Homestead of all allottees, except full bloods, were restricted during the life time of the allottee, not exceeding twenty-one years from the date of the certificate of allotment.

The homestead and surplus allotments of full blood members were restricted until April 21, 1931.

³⁵ *Tiger v. Western Inv. Co.*, 221 U. S. 286, 55 L. Ed. 738; *Heck v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Charles v. Thornburg*, 44 Okla. 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 370, 144 Pac. 1058.

CHAPTER VII.

CHEROKEE—RESTRICTIONS UPON ALIENATION.

INHERITED LAND.

- § 39. Division of Subject.
- 40. Death of Member Prior to Selection of Allotment.
- 41. Allotment of Minor Children.
- 42. Meaning of Phrase "Before Receiving His Allotment".

LANDS ALLOTTED TO LIVING MEMBERS.

- 43. Homestead.
- 44. Surplus.
- 45. Surplus—Act of April 21, 1904.
- 46. Minors.
- 47. Status of Inherited Land Prior to April 26, 1906.

§ 39. **Division of Subject.**—In discussing the restrictions upon alienation applicable to inherited land in the Cherokee Nation it is convenient to divide the subject into two classes as follows:

1. Lands of members who died prior to selection of allotment and to whom lands were allotted after death, under Section 20 of the Cherokee Agreement.
2. Lands of allottees who died subsequent to the selection of their allotment.

§ 40. **Death of Member Prior to Selection of Allotment.**—In order to fix the date upon which those members of the tribe living should be entitled to allotment, Section 25 of the Cherokee Agreement provided for allotment to all citizens of the nation living on September 1, 1902. Evidently anticipating that in some instances those living on that date might die before they had selected and secured the allotment to which they were entitled, Congress enacted Section 20 of the Agreement as follows:

"If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to t

ay of September, nineteen hundred and two, and be-
 eceiving his allotment, the lands to which such per-
 ould have been entitled if living shall be allotted in
 me, and shall, with his proportionate share of other
 property, descend to his heirs according to the laws
 cent and distribution as provided in chapter forty-
 f Mansfield's Digest of the Statutes of Arkansas."

1 the Creek, Seminole and Choctaw-Chickasaw
 ments contained practically identical sections. The
 on arose whether the restrictions upon alienation con-
 in Sections 13, 14 and 15 applied to allotments made
 half of deceased members who had not made their
 on before death under said Section 20. It has been
 ely determined by the Supreme Court of the United
 that these restrictions were applicable only to allot-
 made to living members of said tribe, and that the
 ent selected upon behalf of members who died before
 on, descended to their heirs free from all restrictions
 he part of the heirs. The rule was declared in *Green-*
Morris, 239 U. S. 627, 60 L. Ed. 474, a memorandum
 n reversing the Supreme Court of Kansas which had
 uch lands to be restricted, reported in 135 Pac. 569,
Talley v. Burgess, — U. S. —, 62 L. Ed. 340. To
 ffect see¹

Allotments of Minor Children.—By act of Con-
 f April 26, 1906, the rolls of those entitled to parti-
 in the allotment of the lands of the tribe were ex-
 to include children who were minors, living March
 . This Act merely amended Section 25 of the Chero-
 reement so as to extend the benefits of allotment to
 n born subsequent to September 1, 1902, and prior
 ch 4, 1906. Allotments to such new members were
 in all respects in accordance with the Cherokee
 ment and were subject to the same restrictions upon

ay v. Mallory, 237 Fed. (CCA) 526; *Greenlees v. Wettack*, 43
 . 141 Pac. 282; *Thraves v. Greenlees*, 42 Okla. 764, 142 Pac.

alienation that applied to the lands of the other members of said tribe. If such new member died after March 4, 1906, before selecting his allotment, both surplus and homestead descended to his heirs under Section 20, free from any restriction upon its alienation.²

It was the practice of the Commission to designate as homestead part of the land patented to an allottee who died before selection of allotment as if it had been allotted to him while living. There was, however, no authority for such act upon the part of the Commission, and such designation did not change the status of the land which descended to his heirs unrestricted in its entirety and without division into homestead or surplus.³

§ 42. **Meaning of Phrase "Before Receiving His Allotment."**—The test as to whether the lands were selected prior to death is contained in Section 20:

"If any person whose name appears upon the roll prepared as herein provided shall have died subsequent to the first day of September, 1902, and before receiving his allotment." The selection of allotment, under the rules and regulations of the Commission, was a segregation of the land from the public domain of the nation and vested in the member an equitable title to the land selected, which was converted into a fee simple title upon the issuance of patent. The patent, however, related back to the selection which was the inception of the title. Undoubtedly one who had selected land for allotment, unless subsequently successfully contested within the time prescribed by the rules of the Commission, "had received his allotment" within the meaning of the above provision, whether the certificate of allotment or patent had issued or not. If he died before segregation of the land from the public domain

² *Harris v. Bell*, 235 Fed. 626, 250 Fed. (CCA) 209.

³ *Hawkins v. Oklahoma Oil Co.*, 195 Fed. (CC) 345.

by selection, he had not "received his allotment" and the land to which he was entitled upon being subsequently selected descended to his heirs unrestricted.

LANDS ALLOTTED TO LIVING MEMBERS.

§ 43. **Homestead.**—The question whether restrictions upon alienation attach to the homestead in the lands of the heirs depends upon whether both Sections 13 and 14 of the Cherokee Agreement apply to the homestead or only Section 13. Section 13, so far as the restrictions are concerned, is identical with Section 12 of the Choctaw-Chickasaw Agreement. In both the restricted period is as follows: "Shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment." It is well settled that the homestead under the Choctaw-Chickasaw Agreement was restricted only during the lifetime of the allottee and that upon his death it descended to his heirs free from restriction.

And it seems clear that if only Section 13 of the Cherokee Agreement were involved the same result would be reached as to the Cherokee homestead. The Choctaw-Chickasaw Agreement, however, contained no provision similar to Section 14 of the Cherokee Agreement, which is as follows:

"Lands allotted to citizens shall not in any manner whatever or at any time be incumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act."

The section is undoubtedly broad enough to include the homestead in the words "lands allotted to citizens." And the Circuit Court of Appeals has applied the restrictions of both Sections 13 and 14 to the homestead. If such construction shall prevail, it is clear that the homestead is re-

stricted under Section 13 during the lifetime of the allottee not to exceed twenty-one years from the date of the certificate of allotment, and is further restricted under Section 14 in the allottee or his heirs for five years from the date of the ratification of the Cherokee Agreement, towit: August 7, 1902.⁴

Section 16 of the Supplemental Creek Agreement contains a provision almost identical with Section 14, *supra*, and notwithstanding said section is held to apply to the homestead, there are several authorities holding that the homestead descends to the heirs of the allottee unrestricted. Such holding, however, is predicated upon a provision of the treaty that is absent from the Cherokee Agreement and would not be authority for such a construction of the Cherokee Treaty. The restrictions imposed by Section 14, *supra*, in connection with Section 15, have been held to attach to the surplus allotment for five years after the issuance of patent. The restricted period under Section 14 is five years from the date of the ratification of the Cherokee Agreement, towit: August 7, 1902. As Section 15 applied only to the surplus, there is no conflict with Section 15 so far as the restricted period applicable to other than surplus lands is concerned. It therefore, seems plain that if Section 14 be held to apply to the homestead, that portion of the allotment descended to the heirs of the allottee free from any restrictions under Section 13, but restricted under Section 14 if the death of the allottee occurred prior to August 7, 1907, until that time. Thereafter it was unrestricted if the ancestor died subsequent to August 7, 1907. The restricted period that ran with the land under Section 14 had terminated and it descended to the heirs unrestricted. This conclusion is reached without taking into consideration the Acts of April 26, 1906, and May 27, 1908.

⁴ United States v. Holsell, 247 Fed. (CCA) 390; Truskett v. Closer, 198 Fed. (CCA) 835.

§ 44. **Surplus.**—Section 14 of the Cherokee Agreement is as follows:

“Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this act.”

The restriction upon alienation may be considered to run with the land and to be binding upon both the allottee and his heirs, unless the contrary intention is manifest from the statute.⁵

It would, therefore, seem plain that in the absence of the word “heirs” in the above section the restrictions therein declared would apply to both the allottee and his heirs. The use of the word “heirs,” however, makes it doubly plain that Congress not only did not intend that the restriction should not be personal to the allottee, but expressly indicated that it should apply to the heirs as well. The above section is identical with the corresponding provision of Section 16 of the Supplemental Creek Agreement, and it has been assumed by the Supreme Court of the United States and expressly held by the Supreme Court of Oklahoma, that the Creek surplus land was restricted in the hands of the heirs as well as the allottee. The same conclusion has been reached in regard to the surplus allotment under the Choctaw-Chickasaw Agreements.

There seems to be no question that the surplus allotment under the Cherokee Agreement was restricted in the hands of the heirs. The only question concerns duration of the restricted period. Under Section 14 it was alienable by the allottee or his heirs on the 7th day of August, 1907, five years from the date of the ratification of the Cherokee Agreement.

Under Section 15, however, it was alienable “after five

⁵ *Goodrum v. Buffalo*, 162 Fed. (CCA) 817.

years from the date of the issuance of patent." It has been held, construing the two sections together, that the restricted period extended five years from the date of patent.⁶

Should that construction prevail the inherited surplus was undoubtedly alienable by the heir after five years from the date of patent; otherwise on August 7, 1907.

§ 45. **Surplus—Act of April 21, 1904.**—The Act of April 21, 1904, is as follows:

"And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed."

It will be noticed that the above act does not relieve the disabilities of the allottee but removes the restrictions upon the land itself. The act applies to the land and not to the allottee.⁷

The surplus lands mentioned in the act, to-wit: those of adult allottees not of Indian blood, upon the passage of the above act were unrestricted in the allottees, and upon their death thereafter in their heirs.⁸

§ 46. **Minors.**—Minors were specifically excepted from the provisions of the Act, but it seems clear that the surplus land of an allottee, who was a minor at the time of its passage, was alienable upon the minor attaining his ma-

⁶ 26 Opinions of Attorney General, page 354; *Truskett v. Closser*, 198 Fed. (CCA) 835; *Harris v. Hart*, 151 Pac. 1038; *Allen v. Oliver*, 31 Okla. 356, 121 Pac. 226.

⁷ *United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 107 Pac. 409.

⁸ *Parkinson v. Skelton*, 33 Okla. 813, 128 Pac. 131; *United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 107 Pac. 409; *Iowa Land & Trust Co. v. Dawson*, 37 Okla. 593, 134 Pac. 39.

city thereafter, and that upon his death after attaining s majority the land descended unrestricted to his heirs."

§ 47. Status of Inherited Land Prior to April 26, 1906.

The lands, both surplus and homestead, of members who ed before receiving allotments, were alienable by the sirs whether adult or minor.

The surplus allotments of allottees of Indian blood who ed subsequent to allotment, were inalienable by the heirs r five years from the date of patent, and alienable there- ter.

The surplus allotments of allottees, not of Indian blood ho were adults on April 21, 1904, or upon attaining their ajority thereafter, were alienable by the heirs.

The surplus allotments of allottees whose restrictions ad been removed by the Secretary of the Interior under uthority of the Act of April 21, 1904, were alienable by e heirs in event of death prior to sale.

The homestead allotments of allottees who died after lection were probably inalienable by the heirs, under Sec- n 14, for five years from date of patent, and alienable eafter.

United States v. Shock, 187 Fed. (CC) 862, 870.



CHAPTER VIII.

CHOCTAW-CHICKASAW—ALLOTMENT AGREEMENTS.

- § 48. Atoka Agreement.
- 49. Supplemental Agreement.
- 50. Persons Participating in Allotment.
- 51. Intermarried Citizens.
- 52. Mississippi Choctaws.
- 53. Freedmen.

§ 48. **Atoka Agreement.**—The treaties under which lands of the Choctaw-Chickasaw Nations were allotted severally are known as the Atoka Agreement and the supplemental Agreement. The Atoka Agreement embodied a treaty agreed upon between the Commission to the Civilized Tribes and the Commissioners representing Choctaw and Chickasaw Nations, under date of April 1897. This agreement, as amended, was adopted by Congress by act of June 28, 1898, and as so amended adopted was submitted for ratification by the Choctaw and Chickasaws, as Section 29 of the act, commonly called "The Curtis Act."

In addition to legislation applicable generally to the Indian Territory the Curtis Act provided for the allotment of the lands of the Choctaw and Chickasaw Nations, and the Creek Nation, in the event of the rejection, by the tribes of the treaties thereby respectively submitted for ratification. The Creek Agreement was not adopted by the Creek tribe and the Commission proceeded to allot the lands of the Choctaw and Chickasaw Nations under Section 11 of the Curtis Act, the action of the Commission being subsequently confirmed by the Choctaw and Chickasaw Nations.

The Choctaws and Chickasaws adopted the treaty so submitted to them by said act.

The agreement provided:

"That the agreement made by the Commission to

the Civilized Tribes with the Commissioners representing Choctaw and Chickasaw Tribes of Indians, on the 23rd of April, 1897, as herein amended, is hereby ratified and affirmed and the same shall be in full force and effect if ratified before the first day of December, 1898, by a majority of the whole number of votes cast by the members of said tribes, at an election held for that purpose. . . . If said agreement, as amended, be so ratified, the provisions of this act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement."

The Atoka Agreement was adopted by those tribes on the 24th day of August, 1898, and, upon said adoption, superseded the provisions of the Curtis Act, except where there was no conflict.

49. Supplemental Agreement.—Before any allotments were made, however, of the lands of the nations on March 21, 1902, the agreement known as the Supplemental Agreement was negotiated by the Dawes Commission with Commissioners representing the Choctaw and Chickasaw Nations. This agreement was ratified by Congress by act July 1, 1902, and adopted by the two nations on September 25, 1902.

Section 73 of said agreement it was provided:

And if this agreement be ratified by said tribes as said, the date upon which said election is held shall be deemed to be the date of final ratification."

September 25, 1902, therefore, is the effective date of Supplemental Agreement.¹

Section 68 of the Supplemental Agreement is as follows:

No act of Congress or treaty provision nor any provi-

¹United States v. Choctaw & Chickasaw Nations, 193 U. S. 115, 24 S. Ed. 640.

sion of the Atoka Agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations."

The Supplemental Agreement superseded the Atoka Agreement and the Curtis Act upon all subjects covered by such agreement. After the adoption of such treaty, however, the Curtis Act was still in effect where not inconsistent with the Atoka or Supplemental Agreements, and the Atoka Agreement was effective as to all matters not inconsistent with the provisions of the Supplemental Agreement.

§ 50. **Persons Participating in Allotments.**—There were no complete authentic rolls of either the Choctaw or Chickasaw Nations which had been confirmed by the legislative bodies of the tribes, or approved by the chief executive thereof. There were, however, partial rolls of both Nations. For the Choctaws, there were the census rolls of 1885 and 1896, and the roll compiled in 1893 for the purpose of distributing to the members of the tribe the money due from the United States for the sale by the Choctaw of what is known as the "leased district." There were the partial annuity rolls of the Chickasaws compiled in 1878, the "leased district" roll of 1893, and the census roll compiled in 1896. Congress enacted various legislation for the purpose of enabling the Commission to determine the persons who were entitled to be placed upon the rolls of the various tribes.

Section 21 of the Curtis Act provided with reference to the Choctaws and Chickasaws, as follows:

"Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes (except Cherokees), eliminating from the tribal rolls surnames as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes."

Section 27 of the Supplemental Agreement confirmed the provisions of the Curtis Act with reference to the Choctaw-Chickasaw rolls.

Section 28 of the Supplemental Agreement provided:

"The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in Section 27 hereof shall be placed upon the rolls made by said Commission; and no child born thereafter to a citizen or freedman and no person intermarried thereafter to a citizen shall be entitled to enrollment or to participate in the distribution of the tribal property of the Choctaws and Chickasaws."

The Act of March 3, 1905, directed the Secretary of the Interior to add to the rolls, children born subsequent to September 25, 1902, and prior to April 4, 1905, and who were living on said latter date, to citizens by blood of the tribes. This Act did not apply to freedmen of those tribes.

The Act of April 26, 1906, further directed the Secretary of the Interior to add to the rolls "children who were born living March 4, 1906, whose parents had been enrolled as members" of the Choctaw-Chickasaw Tribes.

The Commission classified and enrolled the members and freedmen of the Choctaw and Chickasaw Nations who participated in the allotment of the lands of the tribes, as follows:

Choctaws by blood; Newborn Choctaws by blood; Minor Choctaws by blood; Choctaws by marriage; Choctaw freedmen; Mississippi Choctaws; Newborn Mississippi Choctaws; Minor Mississippi Choctaws; Chickasaws by blood; Newborn Chickasaws by blood; Minor Chickasaws by blood; Chickasaws by marriage; Chickasaw freedmen. The question of the right of any citizen to enrollment as a member or freedman of the tribes was a political question, and its determination by the United States, or its ad-

should be held by the United States until the legislature of the two nations should have passed the necessary law giving to their former slaves, and their descendants, forty acres each of the lands of said nations, on the same terms as the Choctaws and Chickasaws held theirs. No doubt the provision with reference to withholding the payment of the consideration for the lands so sold was intended to coerce the Choctaws and Chickasaws into agreeing to the stipulation for the benefit of their former slaves. The Choctaws passed the necessary legislation, and the rights of the Choctaw freedmen to receive forty acres of land, upon the allotment in severalty, was not thereafter questioned. The Chickasaws, however, never complied with the conditions imposed by Congress.

Section 21 of the Curtis Act, and Section 29 of the Atoka Agreement, provided for the temporary allotment of forty acres to each Chickasaw freedman until their rights, under the Treaty of 1866, above mentioned, should be determined. Section 36 of the Supplemental Agreement authorized the Court of Claims to determine the rights of the Chickasaw freedmen under said treaty. By Section 40 of the same act it was further provided that allotment to each freedman should be made, and, in the event the court should decide in favor of the Choctaw and Chickasaw Nations, it should render judgment against the United States for the value of the land so allotted. The Court of Claims decided in favor of the nations and that the Chickasaw freedmen had no right to any of the lands of such nations, and rendered judgment in favor of the Choctaws and Chickasaws against the United States for the value of the land taken in allotment for such freedmen. This decision was confirmed on appeal to the Supreme Court of the United States. The right of such Chickasaw freedmen, therefore, is not based upon any action or treaty of the tribe, but upon a gratuity granted by the United States."

^{*} United States v. Choctaw & Chickasaw Nations, 193 U. S. 115, 48 L. Ed. 640; Allen v. Trimmer, 45 Okla. 83, 144 Pac. 795.

Unlike the Creeks, Cherokees and Seminoles, the Choctaws and Chickasaws did not adopt their freedmen into the tribe, and their right to partition extended only to the forty acres of land allotted to them. They are not members or citizens of the tribes and are not included in such designation in the treaties or acts of Congress.

Section 3 of the Supplemental Agreement provided:

"The words "member" or "members," and "citizen" or "citizens," shall be held to mean members or citizens of the Choctaw or Chickasaw Tribes of Indians in Indian Territory, not including freedmen."



CHAPTER IX.

CHOCTAW-CHICKASAW TITLE.

- § 54. Choctaws.
- 55. Chickasaws.
- 56. Grant by the United States.
- 57. Title of Allottee.

§ 54. **Choctaws.**—The Choctaw and Chickasaw are separate tribes but kindred people. Prior to their removal to the Indian Territory, they resided within the states of Mississippi, Alabama and Tennessee. On September 27, 1830, the United States concluded a treaty with the Choctaw Nation, known as the Treaty of Dancing Rabbit Creek, the terms of which, in consideration of the Choctaws agreeing to relinquish their lands east of the Mississippi River, to remove to lands west of that river, the United States agreed to grant to them a tract of country west of the Mississippi River, to be held by them and their descendants, to inure to them and their descendants, they shall exist as a nation and live on it, liable to no further sale or alienation, except to the United States, or with the consent of the United States. A patent was duly issued by the United States in pursuance of such agreement, on the 23rd day of October, 1842, whereby the said lands were granted to the Choctaw Nation, the granting clause being in the identical words above quoted.

§ 55. **Chickasaws.**—By the Treaty of October 20, 1830, the Chickasaw Nation ceded to the United States all their lands in Tennessee, Mississippi and Alabama, and were permitted to find new homes west of the Mississippi River.

By treaty between the Choctaw Nation and the Chickasaw Nation, of June 17, 1837, the Chickasaw Tribe was

district within the limits of the Choctaw country, "to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws) to be called the Chickasaw District of the Choctaw Nation."

It was further provided that the Chickasaws were to have an equal representation in the General Council, to be entitled to all the rights and privileges of the Choctaws, and to be placed upon an equal footing in every respect with any of the other districts of said nation, except that they were not to participate in the Choctaw annuities and the purchase price paid to the Choctaws by the Chickasaws for said lands.

§ 56. **Grant by the United States.**—By treaty between the United States and the Choctaw and Chickasaw Tribes, made June 22, 1855, ratified February 21, 1856, the United States confirmed the treaty between the Choctaws and Chickasaws of June 27, 1837, and guaranteed the said land "to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal undivided interest in the whole."

Thereafter all agreements, respecting the lands subsequently allotted in severalty to the Choctaws and Chickasaws, were made by the United States with those tribes jointly. By the grants and treaties with the United States the Choctaws and Chickasaws, as political communities, were vested jointly with a fee simple title to the lands in those nations, subject only to a reversionary interest in the United States upon the extinguishment of the existence of the tribes as nations or upon their ceasing to live upon it.

¹ Kappler's Laws and Treaties, Vol. 2, pages 311, 486, 706; *Fleming v. McCurtain*, 215 U. S. 56, 54 L. Ed. 88; *United States v. Choctaw Nation*, 179 U. S. 496, 45 L. Ed. 292; *United States v. Choctaw and Chickasaw Nations*, 193 U. S. 115, 48 L. Ed. 640; *Ligon v. Johnson*, 164 Fed. (CCA) 670; *Godfrey v. Iowa Land & Trust Co.*, 21 Ida. 293, 95 Pac. 792.

By Section 15 of the Act of March 3, 1893, provision was made for the appointment of a Commission to the Five Civilized Tribes.

And it was further enacted by Congress:

“The consent of the United States is hereby given to the allotment of lands in severalty, not exceeding 160 acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. — and upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein shall be relinquished and shall cease.”

By such provision and the allotment of the land to the individual members of such tribe, the reversionary interest of the United States therein was extinguished.

§ 57. **Title of Allottee.**—The Atoka Agreement provided for the execution by the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation of a joint patent conveying to the allottee all the right, title and interest of the Choctaws and Chickasaws in and to the lands selected as such allotment.

It also provided:

“And the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement and as a relinquishment of all his right, title and interest in and to any and all parts thereof, except the land embraced in said patents.”


Section 65 of the Supplemental Agreement provided that the acceptance of patents for minors, prisoners, convicts and incompetents, by persons authorized to select their allotments for them, should be sufficient to bind such minors, etc., as to the conveyance of the other lands of the tribes.

By allotment in severalty of the lands of the nations the lottee was vested with a fee simple title to the lands selected for his allotment, subject only to the restriction upon its alienation.²

The inalienability of the lands allotted does not affect the quality of the estate granted and is not inconsistent with a fee simple title.³

² Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834; *In re Five Civilized Tribes*, 199 Fed. (DC) 811; Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941.

³ Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; United States v. Noble, 237 U. S. 74; 59 L. Ed. 844; Tiger v. Western Investment Co., 221 U. S. 286, 55 L. Ed. 738; Western Investment Co. v. Tiger, 10 Okla. 630, 96 Pac. 602; Chase v. United States, 222 Fed. (CCA) 11.



CHAPTER X.

CHOCTAW-CHICKASAW—ALLOTMENT.

- § 58. Homestead—Surplus.
- 59. Allotments of Freedmen.
- 60. Allotment Certificate.
- 61. Patent.
- 62. When Title Vests.
- 63. No Assignable Interest Prior to Selection.
- 64. Mississippi Choctaws.

§ 58. **Homestead—Surplus.**—The land in the Choctaw and Chickasaw Nations was graded by the Commission according to its value and there was allotted to each member an equal in value to three hundred and twenty acres of the average allottable land.

By Section 12 of the Supplemental Agreement it was provided that each member of said tribes should, at the time the selection of his allotment, designate as a homestead of said allotment, land equal in value to one hundred and six acres of the average allottable land of the Choctaw and Chickasaw Nations, and a separate certificate and patent should be issued for said homestead.

Inasmuch as a separate patent was required to be issued for the homestead, it necessarily followed that a separate patent was also to be issued for the balance of the allotment. Part of the allotment was designated as a homestead, but there was no name applied to the balance of the allotment. That part, however, which remained after the selection of the homestead, has been universally called “surplus” and the words homestead and surplus, occurring in subsequent acts of Congress and in decisions of the courts construing them, have acquired a clear and well-defined meaning.

§ 59. **Allotments of Freedmen.**—The distinction between *surplus* and *homestead* did not apply as to freedmen and

ents. Such allotments consisted of forty acres to each freedman and they were conveyed in one patent. The entire allotment of the freedman was inalienable during the life of the allottee. By Act of April 26, 1906, the entire allotment of a freedman was designated as a homestead.

§ 60. **Allotment Certificate.**—Under the rules promulgated by the Commission to the Five Civilized Tribes, it was the duty of the applicant to apply at the office of the Commission for the purpose of filing upon the land selected for his appointment. Provision was made both in the Agreements under which the land was allotted and in the rules and regulations of the commission, for selection by guardian for minors and incompetents.

By Section 6 of the Supplemental Agreement it was provided:

"The word 'select' and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office to be established by the Commission to the Five Civilized Tribes for the Choctaw and Chickasaw Nations, for particular tracts of land."

Section 71 of the Supplemental Agreement provided that, after the expiration of nine months from the date of the original selection of an allotment by or for any citizen or freedman, no contest should be instituted against such selection. The rules and regulations of the Commission provided for the issuance of allotment certificates after the expiration of nine months from the selection of allotments, in case no contests were filed, or upon the termination of such contests in favor of one of the contestants, and the expiration of the time provided for appeal. This departmental regulation had become a recognized part of the machinery of allotment in all the Five Civilized Tribes and, although there was no express provision in the Agreements in regard to the manner in which certificates of allotment were to be issued, the rules of

the commission in this respect were so well understood that the date of the issuance of the certificate of allotment was made the time for computing the restricted period upon the homesteads of members of the tribe and the allotments of freedmen.

By Section 23 of the Supplemental Agreement the practice of issuing allotment certificates was not only recognized, but such certificate was declared to be conclusive of the right of the allottee to the land. It provided:

“Allotment certificates issued by the Commission to the Five Civilized Tribes shall be conclusive evidence of the right of any allottee to the tract of land described therein

It is well settled that an allotment certificate when issued is like a patent, is dual in its effect. It is an adjudication by the special tribunal empowered to decide the questions, that the party to whom it is issued is entitled to the land, and it is a conveyance of the right to this title to the allottee.¹

Only certificates regularly issued were conclusive under Section 23. Such effect was not given those issued by mistake, inadvertence or misconstruction of the law.²

An allotment certificate, however, is merely evidence of the right of the holder to the selection and allotment of the land therein described; it bestows no right of itself. Upon formal selection, in accordance with the rules of the Commission, and the expiration of the nine months period within which a contest might be filed, the right to an allotment became absolute, the allottee having done all that the law required to entitle him to the land selected as his allotment. The duty of executing and issuing allotment certificates and

¹ Wallace v. Adams, 204 U. S. 415, 51 L. Ed. 547; Wallace v. Adams, 143 Fed. (CCA) 716; Bowen v. Carter, 42 Okla. 565, 144 Pac. 111; Frame v. Bivens, 189 Fed. (CC) 785; Thompson v. Hill, 48 Okla. 150 Pac. 203.

² O'Quinn v. Joiner, 166 Pac. 142.

[REDACTED]

[REDACTED]

It has been held, however, that in the event of cancellation of allotment, lands selected in lieu thereof were not affected by conveyances executed as to lands surrendered.⁸

§ 61. **Patent.**—By Section 29 of the Original Agreement, it was provided that as soon as practical after the completion of said allotment, the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation should jointly execute, under their hands and the seals of their respective nations, and deliver to each of the said allottees, patents conveying to him "all the right, title and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him."

There was no provision in the Supplemental Agreement with reference to patents, and such patents were issued under authority of the above provision. Not being inconsistent with any provision of the Supplemental Agreement, that section of the Atoka Agreement remained in effect. The effect of the issuance and delivery of a patent was to vest the legal title in the allottee.

It has been held that there was no necessity that such patents should be approved by the Secretary of the Interior, which was necessary in some of the other nations.⁹

Such patents were, however, given such approval.

§ 62. **When Title Vests.**—Except in the case of Mississippi Choctaws, where a different rule may prevail, upon the selection of an allotment, by a member or freedman of the tribe in accordance with the rules of the Commission, the allottee was vested with the equitable title to the land so selected, which, in the absence of restrictions upon its alienation, would support a conveyance.¹⁰

⁸ *Mullen v. Pickens*, 155 Pac. 871; *Mullen v. Gardner*, 156 Pac. 1160.

⁹ *In re Five Civilized Tribes*, 199 Fed. 811.

¹⁰ *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *Ballinger v. Frost*, 216 U. S. 240, 54 L. Ed. 464; *Gritts v. Fisher*, 224 U. S. 640, 56 L. Ed. 928; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *United States v. Dowden*, 220 Fed. (CCA) 277.

And was sufficient to enable the allottee to maintain an action of ejectment for the land.¹¹

And upon removal of such restrictions thereafter the land was alienable, although no patent had issued.¹²

And the fact that the application was subject to contest during the period of nine months in no way affected the equitable interest in the land so selected. The patent issued subsequently by relation became effective as of the date of the election.¹³

§ 63. **No Assignable Interest Prior to Selection.**—Prior to the selection of his allotment and the segregation of the selected land from the public domain of the nation, a member entitled to allotment had no right or interest that was subject to conveyance. As stated by the Supreme Court of the United States in the case of *Franklin v. Lynch*, 233 U. S. 269:

“The distinction between an allottee and a member is not verbal but was made in recognition of a definite policy in reference to their land. As the tribe could not, neither could the individual member, prior to selection, make a valid contract of conveyance of any interest in the tribal land, for he had neither an undivided interest in such tribal land nor a vendible interest in any particular tract.”

Therefore, a deed to unsegregated land of the tribe, in anticipation of its selection as an allotment, is void, as is also the attempted conveyance, before selection, of the Indian right of participation in the allotment of the lands of the nation, as against governmental policy.¹⁴

¹¹ *Sorrels v. Jones*, 26 Okla. 569, 110 Pac. 745.

¹² *Benadnum v. Armstrong*, 44 Okla. 637, 146 Pac. 34.

¹³ *Thomason v. Wellman & Rhoades*, 206 Fed. (CCA) 895; *Godfrey v. Iowa Land & Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Wood v. Gleason*, 43 Okla. 9, 140 Pac. 418.

¹⁴ *Franklin v. Lynch*, 233 U. S. 269, 58 L. Ed. 954; *Gritts v. Fisher*, 224 U. S. 640, 56 L. Ed. 928; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *McKee v. Henry*, 201 Fed. (CCA) 74; *McWilliams Inv. Co. v. Livingston*, 22 Okla. 884, 98 Pac. 914; *Godfrey v. Iowa Land & Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Casey v. Bingham*, 37 Okla. 132 Pac. 663; *Lynch v. Franklin*, 37 Okla. 60, 130 Pac. 599.

And a provision in a deed by the heirs of an allottee whose selection had been made after his death by an administrator, that if for any reason the allotment should be cancelled, the conveyance should be effective as to any lands selected in lieu of the lands conveyed, was void and conveyed no interest in such lands.¹⁵

Nor did a member before selection of his allotment have any right or interest that he could devise by will. (Refer to chapter on Wills.)

Such contract of conveyance before selection, being against governmental policy, subsequently acquired title by allotment, to the land attempted to be conveyed, will not inure to the benefit of the vendee, under Section 642, Chapter 27, Mansfield's Digest of the Statutes of Arkansas, in force in the Indian Territory prior to statehood, which provided:

"If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such land, but shall afterwards acquire the same, the legal or equitable estate afterwards acquired shall immediately pass to the grantee and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance."¹⁶

Nor will the allottee be estopped by his covenant of warranty contained in deed made prior to selection of allotment.¹⁷

While a contract to convey made before allotment is

¹⁵ Mullen v. Gardner, 156 Pac. 1160; Robinson v. Caldwell, 55 Okla. 701, 155 Pac. 547; Mullins v. Pickens, 155 Pac. 871.

¹⁶ Bledsoe v. Wortman, 35 Okla. 261, 129 Pac. 841; Berry v. Summers, 35 Okla. 426, 130 Pac. 152; Franklin v. Lynch, 233 U. S. 269, 58 L. Ed. 954; Robinson v. Caldwell, 55 Okla. 701, 155 Pac. 547; Vann v. Adams, 164 Pac. 113.

¹⁷ Starr v. Long Jim, 227 U. S. 613, 57 L. Ed. 613; Monson v. Simonson, 231 U. S. 341, 58 L. Ed. 260; Berry v. Summers, 35 Okla. 426, 130 Pac. 152.

id and cannot be enforced, it is not illegal nor immoral, and a deed made after allotment in pursuance of a contract entered into before allotment, is valid.¹⁸

64. **Mississippi Choctaws.**—The allotments of Mississippi Choctaws were subject to a condition subsequent that not apply to the other members or freedmen of the tribes. This condition was continuous residence upon the lands of the Choctaws and Chickasaws for a period of three years, including his residence thereon before and after enrollment or until the time of his death, if it occurred prior to the expiration of that time. Upon proof of such continuous residence to the satisfaction of the Interior Department, he was entitled to a patent.

Section 42 of the Supplemental Agreement provided:

When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw Nations for a period of three years, including his residence thereon before and after such enrollment, he shall, upon due proof of such continuous, *bona fide* residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for his allotment, as provided in the Atoka Agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw Nations."

Upon the compliance with the conditions imposed by Section 42, and the receipt of patent, the lands of the Mississippi Choctaws were held in the same manner and subject to the same restrictions as the lands of other members of said tribes.¹⁹

Casey v. Bingham, 37 Okla. 484, 132 Pac. 663.

Sampson v. Staples, 55 Okla. 547, 149 Pac. 1094, 155 Pac. 213; Mer v. Favre, 44 Okla. 380, 146 Pac. 10; Morris v. Sweeney, 53 Okla. 163, 155 Pac. 537; Sampson v. Smith, 166 Pac. 422.

By Section 44 of the Supplemental Agreement he was allowed four years after his enrollment within which to make such proof of residence. In case of his failure, or of the failure of his heirs or representatives in event of his death, within that time to make such proof, "he, or his heirs and representatives if he be dead, shall be deemed to have acquired no interest in the land set apart to him, and the same shall be sold at public auction. . . ."

Upon selection of an allotment and the issuance of a certificate a Mississippi Choctaw was not entitled, as in the case of other members, to a patent as a matter of course. It would seem, however, that the selection of the allotment was the inception of his title, as in the case of other members, and that upon issuance of patent it would relate back to the date of selection. It is difficult to see any reason why upon selection of his allotment, he should not be vested with the equitable title, subject to be divested by failure to comply with the condition subsequent, to-wit: to make proof of continuous residence within the time limited.

The Supreme Court of Oklahoma, however, has held in the case of *Criner v. Favre, supra*, that a Mississippi Choctaw, unlike the native Choctaw, had no right to the land or a patent thereto, until after he had satisfactorily proved his three years' residence, as provided by Section 42, and that upon his death before such proof, he had no interest which he could devise by will. And prior to such residence he had no interest he could convey.²⁰

In *Sampson v. Staples, supra*, the court declined to decide the question as to when the equitable title vested. In *Morris v. Sweeny, supra*, however, though *Criner v. Favre* is not expressly overruled, a conclusion is reached which cannot be reconciled with that case. In the latter case it was held that the husband of a Mississippi Choctaw woman, who died after selection but before making proof of resi-

²⁰ *Blackwell v. Harts*, 167 Pac. 325.

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receiving patent, was entitled to curtesy in the
t of his deceased wife, under the Arkansas law. At
an equitable estate of inheritance in the wife is
y to support curtesy under that statute, and the
Criner v. Favre is practically overruled by such

CHAPTER XI.

CHOCTAW-CHICKASAW—RESTRICTIONS UPON ALIENATION.

ALLOTTED LAND.

- § 65. Scope of Title.
- 66. Restrictions Applicable.
- 67. Homestead.
- 68. Allotment of Freedman.
- 69. Surplus.
- 70. Issuance of Patent Prerequisite to Alienation.
- 71. When is Patent Issued?
- 72. Date of Patent.
- 73. Expiration of Tribal Governments.
- 74. Voluntary Alienation Comprehended by Restrictions.
- 75. Involuntary Alienation.
- 76. Removal of Restrictions Did Not Affect Exemption.
- 77. Effect of Transactions in Violation of Restrictions.
- 78. Ratification.
- 79. Recovery of Consideration.
- 80. Act of April 21, 1904.
- 81. Freedmen.
- 82. Did Not Authorize Sale Before Allotment.
- 83. Minors.
- 84. Involuntary Alienation.
- 85. Act of April 26, 1906.
- 86. Status of Allotted Land Prior to Act of May 27, 1908.

§ 65. **Scope of Title.**—Allotted land is the land that was selected by or patented to an allottee as his proportionate part of the common domain of the tribe of which he was a member. The term "inherited land" is used to denote such land as came to an heir, not by reason of his membership in the tribe, but by reason of devise or inheritance from an allottee. It is important to keep this distinction in mind, as the restrictions applicable to these are very dissimilar. The present chapter is devoted to consideration of restrictions upon allotted land.

66. Restrictions Applicable. — Restrictions upon alienation were imposed upon the lands of the Choctaws Chickasaws by the Curtis Act, the Atoka Agreement and the Supplemental Agreement. The provisions of the Curtis Act were not to be in force in the event of the ratification by the tribes of the Atoka Agreement, which was voted by Congress as part of the Curtis Act. Both the Atoka Agreement and the Supplemental Agreement, in express terms, superseded the Curtis Act, and there is no question that that Act, in so far as restrictions are concerned, has never been applicable to the lands of these nations. The method of imposing the restrictions is identical in the Atoka and Supplemental Agreements. In both treaties the lands within which such lands might not be "alienated" are definitely fixed, and the conditions upon which they might be sold, after the expiration of the restricted period, are prescribed. In both treaties, in separate paragraphs, from the provisions in which the restricted periods applicable to the homestead and surplus, respectively, were announced, Congress declared the effect of attempted alienation in violation of such restrictions. By the Atoka Agreement it was provided the homestead "shall be inalienable for twenty years from date of patent." By the Supplemental Agreement, this restriction was changed and it was provided "which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of allotment." The restriction applicable to the surplus is contained in the Atoka Agreement is "shall be inalienable for a price to be actually paid, and to include no indebtedness or obligation—one-fourth of said surplus in one year, one-fourth in three years, and the balance of said alienable land in five years from date of patent." By the Supplemental Agreement, the one, three and five year provision was re-enacted, but it was provided that the land could be alienable thereunder only after issuance of a patent and a proviso was added, which did not occur in the Atoka Agreement; "Provided, that such land shall not be

alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value."

By Section 68 of the Supplemental Agreement it was enacted:

"No act of Congress or treaty provision, nor any provision of the Atoka Agreement inconsistent with this Agreement shall be in force in said Choctaw and Chickasaw Nations."

There can be no doubt that the provisions of the Atoka Agreement with reference to restrictions upon both the homestead and surplus, are inconsistent with the corresponding provisions of the Supplemental Agreement, and the courts have invariably treated Sections 12 and 16 of the Supplemental Agreement as embodying the restrictions applicable to the lands of the Choctaws and Chickasaws.

§ 67. **Homestead.**—By Section 12 of the Supplemental Agreement, a homestead consisted of land equal in value to one hundred and sixty acres of the average allottable lands of the tribes. The lands of the nations were graded by the Commission in accordance with their value, exclusive of improvements, and consequently the homestead may consist of more or less than one hundred sixty acres. A separate patent was required by Section 12, and was in fact issued by the Commission, for the land selected as homestead, wherein it was so designated. It was inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. Certificates of allotment were issued to the various allottees during a period of several years and, for that reason, the time when the restricted period began to run, varies in accordance with the facts in each case. It is unimportant, however, as the restricted period had in no case lapsed prior to the passage of the Act of May 27, 1908, where the above provisions were displaced.

§ 68. **Allotment of Freedman.**—The section of the At

Agreement providing for the selection of homesteads, by members of the tribes, and making such homestead inalienable for twenty-one years from the date of patent, contained the following proviso with reference to freedmen:

"This provision shall also apply to the Choctaw and Chickasaw freedman to the extent of his allotment."

By such enactment, the allotment of the freedman was expressly declared to be a homestead and to be subject to the provisions of that section "to the extent of his allotment." In other words, the entire allotment was a homestead. The freedman had no surplus allotment. The Supplemental Agreement did not re-enact such provision of the Atoka Agreement. It merely provided in Section 13 that his allotment should be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. By such section, while the allotment was not designated as a homestead, the restrictions therein imposed coincided with the restrictions applicable to the homestead allotments of members of said tribes. The provision of the Atoka Agreement, declaring the allotment of a freedman to be a homestead, not being inconsistent with Section 13 of the Supplemental Agreement, was not superseded by the latter Agreement under Section 68 of that Agreement. The homestead character was impressed by virtue of the Atoka Agreement, but the period of restriction wherein there is conflict, is governed by Section 13 of the Supplemental Agreement.¹

By Section 3 of the Act of April 26, 1906, it was provided:

"Lands allotted to freedmen of the Choctaw and Chickasaw Tribes shall be considered "homesteads," and shall be subject to all the provisions of this, or any other act of Congress, applicable to homesteads of citizens of the Choctaw and Chickasaw Tribes."

¹ *In re Five Civilized Tribes*, 199 Fed. (DC) 811; *In re Davis' Estate*, 32 Okla. 209, 122 Pac. 547; *Butterfield v. Butler*, 50 Okla. 383, 10 Pac. 1078.

This legislation was merely declaratory of the law theretofore existing as to the status of freedmen allotments, and was intended to remove all doubt that may have arisen regarding such status.²

§ 69. **Surplus.**—Section 16 of the Supplemental Agreement applicable to restrictions upon alienation of the surplus allotment is as follows:

“All lands allotted to members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: Provided, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value.”

§ 70. **Issuance of Patent Prerequisite to Alienation.**—To the provision permitting alienation in one, three and five years from date of patent is added the qualifying condition that such alienation shall occur only after issuance of patent. In this respect Section 16 bears analogy to the provision of the Seminole Agreement which provides that all contracts for sale, disposition, or incumbrance, made prior to date of patent shall be void. A sale, under said Section, prior to issuance of patent was void.³

§ 71. **When Is Patent Issued.**—It becomes necessary to determine what is meant by “issuance of patent” and when that act is complete. There is no provision in the Supplemental Agreement for issuance of patent to an allottee. The Atoka Agreement, however, provided for such issuance and delivery which, not being inconsistent with the Supplemental Agreement, is effective. Under the Atoka Ag

² *In re Five Civilized Tribes*, 199 Fed. (DC) 811.

³ *Franklin v. Lynch*, 233 U. S. 269, 58 L. Ed. 954.

ment, it was the duty of the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation to execute jointly "under their respective hands and seals of the respective nations, and deliver to each of the said allottees, patents, conveying to him all the right, title and interest of the Choctaws and Chickasaws in and to the lands which shall have been allotted to him, etc."

In the Creek and Cherokee treaties, there are requirements that the patents be approved by the Secretary of the Interior. There is no such requirement in the case of the Choctaws and Chickasaws, and there was considerable controversy between the Commission and the chief executives of the Choctaws and Chickasaws with reference to the delivery of the Choctaw and Chickasaw patents. Upon the part of the chief executives, it was contended that approval by the Secretary of the Interior was not necessary and that the patents were ready for delivery upon their execution by them. The Department insisted, however, that approval by the Secretary of the Interior was essential to their validity and this contention was upheld by a decision of the Attorney-General of the United States. The result of such difference of opinion was that none of the patents in the Choctaw and Chickasaw Nations were delivered to allottees until after the summer of 1905 at the earliest, except in the case of certain ones which were delivered by the chief executives of the nations without the intermediary of the Commission, in pursuance of their contention that the said patents were ready for delivery when duly executed by them. These were afterwards recalled and practically all of them surrendered by the allottees to whom they had been delivered, and patents approved by the Secretary of the Interior accepted in their stead.⁴

Judge Campbell of the Eastern District of Oklahoma, held in a well-considered case, that prior to April 26, 1906, the issuance of patent was accomplished when it was de-

⁴ Report of Commission for Five Civilized Tribes, 1905, page 57.

livered to the allottee and accepted by him; that patent was necessary to divest the legal title in the Choctaw and Chickasaw Nations and was governed by the same rules with reference to execution and delivery that pertained to deeds or other instruments of like nature.⁵

By Act of April 26, 1906, provision was made for recording patents in the office of the Commissioner to the Five Civilized Tribes, "and when recorded shall convey legal title." It was further held in above case that after the passage of the above act the issuance of patent was complete when it was recorded.

§ 72. **Date of Patent.**—It is also necessary to determine what is meant by "date of patent" from which is computed the restricted periods of one, three and five years. Judge Campbell also held in the case above mentioned that it was the date upon which the last of the two executives of the tribes affixed his signature to the instrument.

§ 73. **Expiration of Tribal Governments.**—By virtue of the proviso to Section 16 the surplus was inalienable at any time before the expiration of the Choctaw and Chickasaw tribal governments, for less than its appraised value. By the Atoka Agreement it was provided that the tribal governments should continue for a period of eight years from the 4th day of March, 1898. Such tribal governments would therefore have expired, by the terms of such provision, on the 4th day of March, 1906. On the 2nd day of March, 1906, Congress, by resolution, extended the tribal existence and tribal governments of the Five Civilized Tribes, for all purposes, under existing laws, "until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribe, unless hereafter otherwise provided by law." By Section 28 of the Act of April 26, 1906, the tribal governments were continued until otherwise provided by law. Such governments were, by virtue of such enactments in existence,

⁵ *In re Five Civilized Tribes*, 199 Fed. 811.

the meaning of such restriction, during all time that art of such surplus allotments might have been alien- under the provisions of this section prior to Act of 7, 1908. The condition that such lands should not be ed for less than their appraised value was a restric- pon alienation, and any sale in violation of such con- was void.

Voluntary Alienation Comprehended By Restriction.—The prohibition against voluntary alienation ap- o any attempted conveyance or incumbrance of the any lesser interest or estate, corporeal or incorporeal, ig out of or incidental to the ownership thereof. It es sale; gift;⁶ option to purchase;⁷ mortgage;⁸ con- of sale;⁹ power of attorney;¹⁰ sale of timber on land, when the sale of timber is merely incidental to put- e land in cultivation;¹¹ will (see Wills); oil and gas see Oil and Gas Leases); agricultural lease (see Agri- al Leases); assignment of royalties due under mining (see Oil and Gas Leases); assignment of rents and pro- lease for agricultural purposes.¹²

Involuntary Alienation.—The restrictions upon ion protect the lands of the allottee not only against ary alienation, but against involuntary sale, lien or brance upon any obligation contracted during the ted period.

ion 15 of the Supplemental Agreement provides:

lands allotted to members and freedmen shall not be ed or encumbered by any deed, debt or obligation of

11 v. Jones, 51 Okla. 639, 151 Pac. 845.

rnes v. Stonebraker, 28 Okla. 75, 113 Pac. 903.

rnellus v. Yarbrough, 44 Okla. 375, 144 Pac. 1030; Butterfield ler, 50 Okla. 381, 150 Pac. 1078.

urper v. Kelley, 29 Okla. 809, 120 Pac. 293.

hoat v. Oliver, 46 Okla. 683, 148 Pac. 709.

ettes v. Brower, 184 Fed. (DC) 342; Mitchell-Crittenden Tie Crawford, 160 Pac. 917.

Childers v. Childers, 157 Pac. 948.

any character contracted prior to the time at which said land may be alienated under this Act, nor shall said land be sold except as herein provided."

Such a provision is dual in its effect. It constitutes a restriction upon voluntary alienation, and, in addition, partakes of the nature of an exemption.¹³

The word "affect" in Section 15, *supra*, has been held to mean "to act upon; to produce an effect or change upon. In a legal sense it is often used in the sense of acting injuriously upon persons and estates." Encumber means "to place a burden on the title or a charge on the property; a claim or lien on an estate which may diminish its value."¹⁴

By virtue of said sections, the lands of an allottee are protected from all manner of involuntary lien or incumbrance contracted during the restricted period; and upon his death descend to his heirs free from all such debts or obligations.¹⁵

And the sale of the lands of an allottee, by his administrator for the purpose of paying debts contracted by him during the restricted period, is void and confers no rights upon the purchaser.¹⁶

Such lands are not affected nor can they be taken or sold upon judgment founded on contract¹⁷ or tort.¹⁸ They cannot be subjected to any kind of lien by order of court,¹⁹ and

¹³ *Western Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 499; *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washington's Estate*, 36 Okla. 559, 128 Pac. 1079.

¹⁴ *In re Davis' Estate*, 32 Okla. 209, 122 Pac. 547; *Choctaw Lumber Co. v. Coleman*, 156 Pac. 222.

¹⁵ *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washington's Estate*, 36 Okla. 559, 128 Pac. 1079; *In re Davis' Estate*, 32 Okla. 209, 122 Pac. 547; *Redwine v. Ansley*, 32 Okla. 317, 122 Pac. 679; *Choctaw Lumber Co. v. Coleman*, 156 Pac. 222; *Eastern Oil Co. v. Harjo*, 157 Pac. 921; *Barnard v. Bilby*, 171 Pac. 444.

¹⁶ *Eastern Oil Co. v. Harjo*, 157 Pac. 921; *In re French's Estate*, 45 Okla. 819, 147 Pac. 319.

¹⁷ *Western Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 588.

¹⁸ *Mullen v. Simmons*, 234 U. S. 192, 58 L. Ed. 1274; *Choctaw Lumber Co. v. Coleman*, 156 Pac. 222.

¹⁹ *Tiger v. Reed*, 159 Pac. 499.

a judgment of partition or one decreeing a lien in a suit for alimony is null and void.²⁰ They are not subject to material men's lien²¹ nor to lien of occupying claimant under Section 4933, Rev. Laws 1910.²² And such exemptions extend not only to the land itself, but to the rents and profits accruing therefrom.²³

§ 76. Removal of Restrictions Did Not Affect Exemption.—From the dual nature of the restrictions upon alienation it has been held that a removal of restrictions by the Secretary of the Interior was effective only as to voluntary alienation and that the exemption from forced sale would remain unless expressly made a part of the order of removal.²⁴

A like effect has been given to the Act of April 21, 1904. Each Act removed the restrictions upon the voluntary alienation of the surplus allotments of members not of Indian blood, but left unimpaired the exemption against involuntary alienation theretofore in effect.²⁵

§ 77. Effect of Transactions in Violation of Restrictions.—It has been seen that Sections 12 and 16 of the Supplemental Agreement prescribing the respective periods within which the homestead and surplus allotments of allottees could not be "alienated" superseded the corresponding provisions of the Atoka Agreement. In each Agreement there was an additional section supplementing the restrictions implied by the use of the word "inalienable" in the provision mentioned. By these latter provisions, Congress undertook to define the status of such restricted land in regard to the quality of alienability, ordinarily incident to

²⁰ Childers v. Childers, 163 Pac. 948, 157 Pac. 938; Burney v. Burney, 160 Pac. 85.

Keel v. Ingersoll, 27 Okla. 117, 111 Pac. 214.

Cravens v. Amos, 166 Pac. 140.

Childers v. Childers, 157 Pac. 938, 163 Pac. 948; Burney v. Burney, 160 Pac. 85; Redwine v. Ansley, 32 Okla. 317, 122 Pac. 679.

Western Investment Co. v. Kistler, 22 Okla. 222, 97 Pac. 588.

²⁵ *In re Davis' Estate*, 32 Okla. 209, 122 Pac. 547.



§ 77

LANDS OF THE FIVE CIVILIZED TRIBES.

fee simple ownership and to declare the effect of contracts and conveyances in violation of the restrictions imposed.

The provision of the Atoka Agreement under discussion is as follows:

“That all contracts looking to the sale or incumbrance in any way, of the land of an allottee, except the sale heretofore provided, shall be null and void.”

Section 15 of the Supplemental Agreement reads:

“Lands allotted to members and freedmen shall not be affected or incumbered by any deed, debt, or obligation of any character contracted prior to the time at which the land may be alienated under this act, nor shall said lands be sold, except as herein provided.”

While the two provisions are not identical, they perform the same function in the governmental purpose of restriction, and each is complete within itself. They could not be considered supplementary of each other, for the reason that while the latter is broader than the former, they are both largely concerned with the same subject matter. It would therefore seem that each provision expressed, at the time of its enactment, the legislative intent with reference to the same subject, and that Section 15 of the Supplemental Agreement, by virtue of Section 68 of that treaty, succeeded the corresponding provision of the Atoka Agreement.²⁶

But the Supreme Court of Oklahoma has invariably treated such provision of the Atoka Agreement as supplementing Section 15 of the Supplemental Agreement. In the case of *Lewis v. Clements* 21 Okla. 167, 95 Pac. 769, the first to give effect to such provision, as still in force, and it was followed by *Howard v. Farrar*, 28 Okla. 490, 95 Pac. 695; *Rogers v. Noel*, 34 Okla. 238, 124 Pac. 976, and the recent case of *Collins Investment Co. v. Beard*, 46 Okla. 310, 148 Pac. 846. The decision in *Lewis v. Clements*, su

²⁶ *In re Five Civilized Tribes*, 199 Fed. 811; *Pedwine v. Ansley*, 46 Okla. 317, 122 Pac. 679.

is based upon the case of *Sayer v. Brown*, 7 Ind. Ter. 5, 104 S. W. 877, decided by the Court of Appeals of the Indian Territory.

The restrictions upon alienation imposed under the Choctaw and Chickasaw treaties are no more drastic than those applicable to the lands of the other nations. It will be observed that Section 15 of the Supplemental Agreement does not expressly declare void transactions in violation of the restrictions. It is, no doubt, to meet this condition that the state courts have brought forward the provision of the Atoka Agreement which in express terms declares such contracts void. It seems clear, however, even in the absence of a specific declaration to that effect that contracts or conveyances seeking to affect or incumber restricted land, being in contravention of governmental policy, would be void, unavoidable and that the addition of that provision would not change the legal effect. In either event, whether effect given to the provision of the Atoka Agreement or not, contracts and conveyances in violation of the restrictions on alienation are absolutely void.²⁷

And a subsequent grantee of the same land, after it has become alienable, may attack conveyances made prior thereto, although he had personal knowledge thereof.²⁸

Section 16 of the Supplemental Creek Agreement contained a provision against ratification and estoppel, which was absent from the Choctaw and Chickasaw treaties. Such provision is as follows:

"Any agreement or conveyance of any kind or character, violative of any of the provisions of this paragraph, shall be absolutely void and not susceptible of ratification in any manner and no rule of estoppel shall ever prevent the assertion of its invalidity."

Heckman v. United States, 224 U. S. 413, 56 L. Ed. 820; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Monson v. Simonson*, 231 U. S. 341, 58 L. Ed. 260; *Starr v. Long Jim*, 227 U. S. 613, 57 L. Ed. 1045; *Oates v. Freeman*, 157 Pac. 74; *Folsom v. Jones*, 173 Pac. 649. *Simmons v. Whittington*, 27 Okla. 356, 112 Pac. 1018; *Chapman v. ...*, 30 Okla. 714, 120 Pac. 608.

In construing the Choctaw and Chickasaw treaties several decisions of the Supreme Court of Oklahoma following the case of *Sayer v. Brown*, 7 Ind. Ter. 675, 104 S. W. 877, have sought to give the same effect to contracts and conveyances, in violation of their provisions, that is prescribed by the above provision of the Creek Agreement. This is accomplished by holding that any such attempted contract or conveyance constitutes an illegal act, and is therefore, incapable of supporting any legal right by ratification or estoppel. In such cases, such contracts or conveyances are declared to be "illegal" and "in violation of law."²⁹

It is significant, however, that such expressions are used by the Supreme Court only in connection with the Choctaw and Chickasaw treaties. In construing the Creek treaties such contracts and conveyances have invariably been held to be void and incapable of ratification, but such holding is predicated upon the provision of Section 16 so declaring and in no instance have the words "illegal" or "in violation of law" been employed. The Supreme Court of the United States has had many occasions to construe Indian treaties including those of the Five Civilized Tribes, where the policy of protecting the Indian allottee was equally apparent, and the restrictions against alienation as plainly provided, and, while transactions in violation of such restrictions have been held void, as in violation of express provisions or governmental policy, they have never been held to be illegal.³⁰

In *Heckman v. United States*, *supra*, the Supreme Court in construing the Cherokee Agreement, held that the consideration received by the allottee, upon a transaction

²⁹ *Lewis v. Clements*, 21 Okla. 167, 95 Pac. 769; *Howard v. Farr*, 28 Okla. 490, 114 Pac. 695.

³⁰ *Monson v. Simonson*, 231 U. S. 341, 58 L. Ed. 260; *Starr v. Jim*, 227 U. S. 613, 57 L. Ed. 613; *Heckman v. United States*, S. 413, 56 L. Ed. 820; *Goat v. United States*, 221 U. S. 458, 56 S. 841; *Oates v. Freeman*, 157 Pac. 74.

ation of restriction, might be recovered in case it had been squandered, but declined to make the return of consideration a condition of the cancellation of the conveyance. Such ruling is a clear differentiation of transactions in violation of restrictions from illegal transactions. Under well-established principles, had the transaction been illegal or in violation of law, the court would have declined to permit the purchaser to invoke its aid to be relieved from the consequences of his illegal act.

The Supreme Court of Oklahoma, in construing the Creek treaty, expressly held that transactions in violation of the restrictions imposed by that treaty were not illegal and that the consideration paid might be recovered upon repudiation of the contract by the allottee.³¹

The Supreme Court of the State in construing the C. & G. Allotment Agreement has held that possession under the agreement, executed in violation of its restrictions would support an action for damages to planted crops thereon;³² or for the crops;³³ and that an allottee, under such conditions was justified in unlawfully taking possession of the crops and converting them to his own use.³⁴

8. **Ratification.**—Whether transactions in violation of restrictions on alienation are merely void or are illegal is material in determining the effect, upon such transactions, of an attempted ratification and affirmation after the disability has been removed. If the contract is not unlawful, the consideration therefor would support a subsequent conveyance. If it is unlawful, subsequent ratification or affirmation would be tainted with the original illegality and would render the subsequent transaction void.

Justice Hayes, who wrote the opinion in *Howard v. Marshall*, seems to have recognized in *Simmons v. Whitting-*

State v. Gaines, 25 Okla. 141, 105 Pac. 193.

Holden v. Lynn, 30 Okla. 663, 120 Pac. 246.

Midland Valley Ry. Co. v. Lynn, 38 Okla. 695, 135 Pac. 370.

Burns v. Malone, 37 Okla. 40, 130 Pac. 278.

ton, 27 Okla. 356, 112 Pac. 1018, that, prior to the taking effect of Section 19 of the Act of April 26, 1906, a deed made after restrictions had been removed, in pursuance of a contract entered into before that time, would be valid when he used this language:

"Prior to the enactment of April 26, 1906, contracts and agreements for the sale and purchase of allotments made before the removal of restrictions were void; but there existed no statute which specifically made deeds, procured after the removal of restrictions, in pursuance of the contracts made before, void."

A condition which he finds to have been the actual cause of the passage of that act by Congress. Decisions construing the Creek treaty are not authority in considering the question under the Choctaw-Chickasaw treaties. On account of the express provisions of Section 16 declaring such contracts or conveyances to be incapable of ratification.

§ 79. **Recovery of Consideration.**—The question of recovery of the consideration upon the repudiation of a transaction by the owner of restricted land depends upon the determination of the nature of the act in violation of the restriction. If the act is illegal, the consideration cannot be recovered. If it is merely void, it seems clear it would be recoverable in an action for money had and received.

In *Howard v. Farrar*, 28 Okla. 490, 114 Pac. 695, and *Sayer v. Brown*, 7 Ind. Ter. 675, 104 S. W. 877, involving the construction of the Choctaw-Chickasaw allotment agreements, it was held that the transaction was unlawful and that the courts would not lend their aid to recover the consideration paid. In *Tate v. Gaines*, 25 Okla. 141, 112 Pac. 193; *Folsom v. Jones*, 173 Pac. 649, involving construction of the Creek allotment agreements, it was held that the transaction was not illegal and that the consideration might be recovered.

§ 80. **Act of April 21, 1904.**—Under the law by which the lands of the Choctaw and Chickasaw Nations were allotted in severalty, and disregarding subsequent legislation, the land, other than homestead, allotted to each member of said nations was subject to unrestricted alienation, after issuance of patent; one-fourth in one year; one-fourth in three years, and one-fourth in five years from date of patent.

On April 21, 1904 Congress enacted as follows:

"And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians, who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, etc."

The effect of the Act was to render the surplus allotments of all non-Indian citizens free from any restrictions upon their voluntary alienation. They were thereby authorized to convey the fee or any lesser estates therein.³⁵

The requirement that patent issue before alienation was a restriction that was removed by said Act.³⁶

The Act was applicable to only one class of allottees of the Choctaws and Chickasaws, to wit: intermarried or adopted citizens, not of Indian blood. The Commission did not indicate upon the rolls of the different tribes in the case of adopted citizens whether the applicant was or was not of Indian blood. If he were not of the blood of the

³⁵ *Casey v. Bingham*, 37 Okla. 484, 132 Pac. 663; *Sharp v. Lancaster*, Okla. 349, 100 Pac. 578; *Elred v. Okmulgee Loan & Trust Co.*, 22 Okla. 742, 98 Pac. 929; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409; *U. S. v. United States*, 224 U. S. 458, 56 L. Ed. 841; *United States v. Bess*, 195 Fed. (CCA) 707; *Williams v. Johnson*, 32 Okla. 247, 122 Pac. 485.

³⁶ *Frame v. Bivens*, 189 Fed. (CC) 785.

tribe by which he was adopted, he was entered as "adopted," regardless of his blood. It has been held that if allottee, so enrolled as "adopted," were in part of Indian blood, even though of a tribe other than one of the Five Civilized Tribes, that his restrictions were not removed by said Act; and that the action of the Commission in enrolling him as "adopted" was not conclusive that he was of Indian blood.³⁷

§ 81. **Freedmen.**—Freedmen of the Choctaw and Chickasaw Tribes, unlike those of the Creek, Cherokee and Seminole Tribes, were not members of the tribe, and did not participate equally with such members in the distribution of the lands of the nation. They were allotted forty acres only, all of which was a homestead, within the meaning of the above Act, and therefore, unaffected thereby.³⁸

§ 82. **Did Not Authorize Sale Before Allotment.**—The word "allottee" used in said Act signifies a member of a tribe to whom an allotment has been made or who has selected an allotment. The Act did not apply to one who had not made his selection, although a member belonging to the class whose allotment, if selected would by virtue of the above Act be free from restrictions on alienation. Prior to selection of allotment, notwithstanding the passage of said Act, he was powerless to make a valid contract of conveyance.³⁹

§ 83. **Minors.**—The Act specifically excepted minors from its operation. It was only by reason of their minor

³⁷ *United States v. Stigall*, 226 Fed. (CCA) 190; *Lula, Seminole No. 908 v. Powell*, 166 Pac. 1050.

³⁸ *In re Five Civilized Tribes*, 199 Fed. (DC) 811; *In re Davis et al.*, 32 Okla. 209, 122 Pac. 547; *Butterfield v. Butler*, 50 Okla. 150 Pac. 1078.

³⁹ *Franklin v. Lynch*, 233 U. S. 269, 58 L. Ed. 954; *Parkinson v. Lynch*, 33 Okla. 813, 128 Pac. 131; *Lynch v. Franklin*, 37 Okla. 60 Pac. 599.

inexperience that they were excepted from the provisions that applied to adult members of their class. Upon attaining their majority, after the passage of said act, the reason for their exclusion was removed. It has therefore been held that the restrictions were removed by the act upon the surplus allotments of non-Indian members who were minors at the time of its passage, upon their attaining their majority thereafter.⁴⁰

4. Involuntary Alienation.—The above act in removing the restrictions upon voluntary alienation did not affect the exemption against involuntary alienation provided in Section 15 of the Supplemental Agreement. After the passage of said act, as before, the surplus lands of adult Indian allottees were protected against any manner of sale or incumbrance contracted prior to the time when they could have been alienated under the treaty.⁴¹

5. Act of April 26, 1906.—After the Act of April 21, 1906, no further acts of Congress removing restrictions upon allotted lands were passed until the Act of May 27, 1906. The Act of April 26, 1906, removed restrictions upon surplus lands, but not upon allotted lands. On the other hand, the last-mentioned act extended the restricted provisions to both surplus and homestead lands of all full-blood Indians, and abolished the difference in respect to the allotment periods that had theretofore obtained between the two divisions of the allotment.

Section 19 of the Act of May 26, 1906, is as follows:

“No full-blood Indian of the Choctaw, Chickasaw, Creek or Seminole Tribes shall have power to sell, dispose of, or encumber in any manner any

Waters v. Shock, 187 Fed. (CC) 862, 370; *Charles v. Thornhill*, 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 370, 144 Pac. 1021; *Greenlees*, 42 Okla. 764, 142 Pac. 1021.

Wich's Estate, 45 Okla. 819, 147 Pac. 319; *Western Inv. Co.*, 22 Okla. 222, 97 Pac. 588.

of the lands allotted to him for a period of twenty years from and after the passage and approval of this Act, unless such restriction shall, prior to the expiration of the period, be removed by act of Congress."

The surplus allotments of full-bloods, as well as members of the Choctaws and Chickasaws, except members of Indian blood were at the time of the passage of the above Act, alienable under the Supplemental Agreement after issuance of patent, one-fourth in one year, one-fourth in three years and the balance in five years from date of patent. There was considerable controversy between the Commission and the chief executives of the two tribes as to whether the approval of the patent by the Secretary of the Interior was necessary. The result was that no patents were delivered until after the summer of 1905 at the earliest, except certain ones that were delivered by the chief executives themselves, without the approval of the Secretary of the Interior. Practically all of these were subsequently surrendered by the allottees and patent was proved by the Secretary of the Interior, accepted in their stead. As the alienability of the surplus *after issuance of patent* in one, three and five years was determined by the date of patent, it is probable that in some instances one-fourth of the surplus was alienable at the time of the passage of the Act of April 26, 1906. In most instances the year from the date of patent had not expired and the entire surplus was alienable at the time of its passage. In those cases, one-fourth was alienable, the balance of the allotments still subject to restrictions. The constitutionality of the extension of restrictions when the land was at the time subject to restrictions is well settled and such Act operates to re-restrict the restricted surplus of all full-bloods April 26, 1931.⁴²

⁴² *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 111; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Chas. Thornburg*, 44 Okla. 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 144 Pac. 1058.

It is also settled that Congress had authority, by the passage of said Act, to restrict the lands of members of the Five Civilized Tribes which were at the time of the passage of said Act, free from restrictions upon alienation.²⁷

And there is no reason apparent why, the one-fourth of the surplus of full-bloods that may have been free from restrictions at the time of the passage of the Act, by reason of the expiration of one year from the date of patent, unless it was sold before its passage, was not made inalienable thereby until April 26, 1931. The said Act extended the exemption against involuntary alienation as well as said Act, free from restrictions upon alienation.⁴³

§ 86. Status of Allotted Land Prior to Act of May 27, 1908.—The surplus allotments of all adult members, not of Indian blood, were alienable after April 21, 1904. The surplus allotments of minors, not of Indian blood, were alienable after April 21, 1904, upon their attaining their majority. One-fourth in acreage of the surplus allotments of members of Indian blood, less than full-blood, whether minors or adults, whose patents were dated more than one year prior to July 27, 1908, was unrestricted. The balance was inalienable unless patent was dated more than three years prior thereto, in which case one-half was alienable. The surplus allotments of full-bloods were inalienable until April 26, 1931. The homestead allotments of all allottees, except full-bloods, were inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the certificate of allotment. The homesteads of full-bloods were inalienable until April 26, 1931. The entire allotments of freedmen were inalienable during the lifetime of the allottee, not exceeding twenty-one years from the expiration of the restriction against voluntary alienation.⁴⁴

²⁷Brader v. James, — U. S. —, 62 L. Ed. 335.

⁴⁴Eastern Oil Co. v. Harjo, 157 Pac. 921.



CHAPTER XII.

CHOCTAW-CHICKASAW—RESTRICTIONS UPON ALIENATION—INHERITED LAND.

- § 87. Division of Subject.
- 88. Death of Member Prior to Selection of Allotment.
- 89. Allotment of New Born Children.
- 90. Freedmen.
- 91. Meaning of Phrase "Before Receiving His Allotment".

LANDS ALLOTTED TO LIVING MEMBERS.

- 92. Homestead.
- 93. Allotments of Freedmen.
- 94. Surplus.
- 95. Surplus—Act of April 21, 1904.
- 96. Minors.
- 97. Status of Inherited Land Prior to April 26, 1906.

§ 87. **Division of Subject.**—In discussing the restrictions upon alienation applicable to the inherited lands of Choctaws and Chickasaws, it is convenient to divide the subject into two classes as follows:

1st. Lands of members who died prior to selection of allotment and to whom lands were allotted under Section 22 of the Supplemental Agreement.

2nd. Lands of allottees who died subsequent to selection of allotment.

§ 88. **Death of Member Prior to Selection of Allotment.**—The Commission who negotiated the first allotment agreement with the Choctaws and Chickasaws were unable to come to an understanding with the tribes with reference to the date for closing the rolls. As a result the Supplemental Agreement while providing "that all the lands within Indian Territory belonging to the Choctaw and Chickasaw

ians shall be allotted to the members of said tribes," ed to fix the date upon which such membership should determined. This deficiency, however, was supplied by tion 28 of the Supplemental Agreement, which provided: "The names of all persons living on the date of the l ratification of this Agreement (September 25, 1902), itled to be enrolled as provided in Section 27 hereof ll be placed upon the rolls made by such Commission." dently anticipating that participation by those living September 25, 1902, might in some instances be cut off death, Congress made provision for such contingency the insertion of Section 22, which provided:

"If any person whose name appears upon the rolls, pre- ed as herein provided, shall have died subsequent to the fication of this agreement and before receiving his al- ment of land, the lands to which such person would have t entitled if living shall be allotted in his name, and l, together with his proportionate share of other tribal erty, descend to his heirs according to the laws of ent and distribution as provided in Chapter forty-nine fansfield's Digest of the Statute of Arkansas."

ie restrictions against alienation contained in Sections 13, 15 and 16 of the Supplemental Agreement applied to allotments made to living members of the tribes had no application to lands allotted on behalf of mem- , who were living upon September 25, 1902, but died re having selected their allotments. Such lands, when eted, including that which would have been designated a as homestead and surplus, if allotted to living mem- , descended to the heirs, free from any restriction upon r alienation.¹

§ 89. Allotments of New Born Children.—By the Acts March 3, 1905, and April 26, 1906, the rolls were ex-

¹Allen v. United States, 224 U. S. 448, 56 L. Ed. 834; Hancock v. Trust Co., 24 Okla. 391, 103 Pac. 566; Hoteyabi v. Vaughn, 32 807, 124 Pac. 63.

tended to include children born subsequent to September 25, 1902, and prior to March 4, 1906, and living on that date. These Acts merely amended Section 28 of the Supplemental Agreement so as to extend the benefits of allotment to the children mentioned. Allotments to such new members were made in all respects in accordance with the Choctaw-Chickasaw Agreements and were subject to the same restrictions upon alienation that applied to the lands of other members of said tribes. If such new member died before selecting his allotment, the entire allotment, without distinction as to homestead or surplus, descended to his heirs, unrestricted.²

§ 90. **Freedmen.**—The word “person” used in Section 22 of the Supplemental Agreement included members, citizens and freedmen. A duly enrolled freedman living September 25, 1902, who died prior to selection of allotment was by said Section, entitled to have an allotment selected in his name, which descended to his heirs; and such allotment when so selected, was subject to unrestricted alienation by such heirs.³

§ 91. **Meaning of Phrase “Before Receiving His Allotment.”**—The provisions of Section 22, *supra*, applied to any person “who shall have died subsequent to the ratification of this agreement and *before receiving his allotment of land.*” The selection of allotment under the rules and regulations of the Commission and under Section 6 of the Supplemental Agreement, was a segregation of the land selected, from the public domain of the nations and vested in the member an equitable title to the land, which was converted into a fee simple title upon issuance of patent. The patent, however, related back to the selection which was the inception of the title. Undoubtedly, one who has

² Harris v. Bell, 235 Fed. (DC) 626, 250 Fed. (CCA) 209; *Hawkins v. Okla. Oil Co.*, 195 Fed. (CC) 345.

³ Hancock v. Mutual Trust Co., 24 Okla. 391, 103 Pac. 566.

selected land for allotment, had, to the extent of the land selected, "received his allotment," within the meaning of Section 22, whether the certificates of allotment or patent had been issued or not. If he died before segregation of the land from the public domain by selection of allotment, he had not "received his allotment," and the land to which he was entitled, upon being subsequently selected, descended to his heirs unrestricted.

LANDS ALLOTTED TO LIVING MEMBERS.

§ 92. **Homestead.**—By Section 12 of the Supplemental Agreement, it was provided that each member should designate land equal in value to one hundred and sixty acres as a homestead "which shall be inalienable during the life time of the allottee, not exceeding twenty-one years from the date of certificate of allotment." Such homestead was restricted by its express terms, only during the life time of the allottee, and upon his death descended to his heirs subject to unrestricted alienation. The Supreme Court of the United States in *Mullen v. United States*, used this language:

"It will be observed that the homestead lands are made inalienable 'during the life-time of the allottee, not exceeding twenty-one years from the date of certificate of allotment.' The period of restriction is thus definitely limited and the clear implication is that when the prescribed period expired, the lands were to become alienable; that is by the heirs of the allottee upon his death, or by the allottee himself at the end of the twenty-one years. Thus, with respect to homestead lands, the Supplemental Agreement imposed no restrictions upon the alienation by the heirs of the allottee."

§ 93. **Allotments of Freedmen.**—The restriction upon alienation imposed by Section 13 of the Supplemental

* *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *Brader v. James*, — U. S. —, 62 L. Ed. 335; *Gannon v. Johnson*, 40 Okla. 695, 140 Pac. 430; *Gannon v. Johnson*, 243 U. S. 108, 61 L. Ed. 622.

Agreement upon the allotment of freedmen is identical with that imposed by Section 12 upon the homestead member, and the reasoning advanced in *Mullen v. United States* is equally applicable. Upon the death of a freedman, his entire allotment descended to his heirs, free from any restriction upon its alienation.⁵

§ 94. **Surplus.**—The restrictions upon alienation in Section 16 Supplemental Agreement applicable to the surplus are as follows:

“All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; each case from date of patent: Provided that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value.”

It will be observed that the only condition, by express enactment, applicable to the heirs as well as the allottee contained in the proviso, that such land shall not be sold prior to the expiration of the tribal governments for less than its appraised value. And it has been contended that the mention of the word “heirs” in the proviso evinced an intention that only the restriction prescribed in the proviso should run with the land and apply to the heirs as well as the allottee. It is settled however, that the one, three and five year restriction as well as the condition that it should not be sold, during the existence of the tribal governments for less than its appraised value attached to the land in the hands of the heirs as well as the allottee. The surplus allotment was alienable by the heir, one-fourth in one year, one-fourth in three years and the balance in five years, free

⁵ *Hancock v. Mutual Trust Co.*, 24 Okla. 391, 103 Pac. 566.

date of patent: provided during the existence of the tribal governments the price was equal to or in excess of the appraised value.⁶

§ 95. **Surplus—Act of April 21, 1904.**—The Act of April 21, 1904, is as follows:

“And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed.”

It will be noticed that the above act does not relieve the disabilities of the allottee but removes the restrictions upon the land itself. The act applies to the land and not to the allottee.⁷

The surplus lands mentioned in the act, to-wit; those of adult allottees not of Indian blood, upon the passage of the above act were unrestricted in the allottees, and upon their death thereafter in their heirs.⁸

§ 96. **Minors.**—Minors were specifically excepted from the provisions of the Act, but it seems clear that the surplus land of an allottee, who was a minor at the time of its passage, was alienable upon the minor attaining his majority thereafter, and that upon his death after attaining his majority the land descended unrestricted to his heirs.⁹

§ 97. **Status of Inherited Land Prior to April 26, 1906.**—The lands, both surplus and homestead, of members who

⁶*Cannon v. Johnson*, 40 Okla. 695, 140 Pac. 430; *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *In re Five Civilized Tribes*, 139 Fed. (DC) 811; *Gannon v. Johnson*, 243 U. S. 198, 61 L. Ed. 622.

⁷*United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409.

⁸*Parkinson v. Skelton*, 33 Okla. 813, 128 Pac. 131; *United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409; *Iowa Land & Trust Co. v. Dawson*, 37 Okla. 593, 134 Pac. 39.

⁹*United States v. Shock*, 187 Fed. (CC) 862.

died prior to selection of allotment, were alienable by the heirs, whether adult or minor, without restrictions or condition.

The homestead allotments of allottees who made their selection prior to death were alienable by the heirs upon the death of the allottee.

The surplus allotments were alienable by the heirs, one-fourth in one year, one-fourth in three years and the balance in five years, upon the condition that during the existence of the tribal governments, they were not sold for less than their appraised value.

The surplus allotments of adult allottees, not of Indian blood, who died after April 21, 1904, or who died after attaining their majority after said date, were alienable by the heirs free from restriction or condition.

CHAPTER XIII.

CREEK—ALLOTMENT AGREEMENTS.

98. Curtis Act.
99. Original Creek Agreement.
100. Supplemental Agreement.
101. Persons Participating in Allotment.
102. Members by Blood.
103. Freedmen.

98. **Curtis Act.**—By the Curtis Act there was submitted for ratification by the Choctaws and Chickasaws the agreement with those tribes of April 23, 1897, as amended by Congress; and there was submitted for ratification by the Creeks the Agreement of September 27, 1897, also as amended by Congress. The first named Agreement was included in the Curtis Act as Section 29, and the latter as Section 30 thereof. As to both Agreements it was provided that if as so amended, said Agreement should be ratified prior to December 1, 1898, the provisions of the Curtis Act should not apply to said tribe, only where the same did not conflict with the terms of said Agreement. The Agreement submitted to the Choctaws and Chickasaws was adopted by them and became the basis for the allotment of the land in those Nations under the name of the Atoka Agreement. The Agreement submitted to the Creeks failed of ratification by that Nation at an election held on November 1, 1898, and never became effective. As a result of such failure to ratify said Agreement the Curtis Act became operative in the Creek Nation on December 1, 1898. Section 11 of the Curtis Act provided in part: "That when the roll of citizenship of any of said nations or tribes is fully completed as provided in law, and the survey of the lands of said nation or tribe is so completed, the Commission, heretofore appointed, known as the "Dawes Commission," shall proceed to the exclusive use and occupancy of the surface of all

the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location and value of same." Upon the rejection of the treaty the Commission proceeded to allot the lands of the Creeks under said Section 11, and opened an office for allotment in Muskogee on April 1, 1899. By May 25, 1901, the date of the adoption of the Original Creek Agreement, a large portion of the Creek lands had been selected for allotment under said Section.

§ 99. **Original Creek Agreement.**—The first agreement with the Creeks to be ratified by both Congress and the tribe was the one negotiated under date of April 8, 1900, adopted by Congress by Act of March 1, 1901, and ratified by the tribe on May 25, 1901, upon which date it became effective, known as the Original Creek Agreement. Allotments selected under the Curtis Act conferred only a provisional surface right to the land so selected, during the life time of the allottee. By Section 6 of the Original Agreement it was provided: "All allotments made to Creek citizens by said Commission, prior to the ratification of this Agreement, as to which there is no contest, and which do not include public property, and are not herein otherwise affected, are confirmed, and the same shall, as to appraisal and all things else, be governed by the provisions of this agreement."

The effect of said Section was to affirm allotments made under the Curtis Act, and to place them in every respect upon the same basis with allotments, thereafter selected. They were thereafter governed by and subject to all the terms, conditions and restrictions imposed by said Agreement.¹

¹ Woodward v. De Graffenreid, 238 U. S. 281, 59 L. Ed. 1310; De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 624; Divine v. Harmon, 30 Okla. 820, 121 Pac. 219.

By Section 41 of said Agreement it was provided, that Section 13 of the Curtis Act "shall not apply to or in any manner effect the lands or other property of said tribe or be in force in the Creek Nation and no Acts of Congress, or treaty provision inconsistent with this Agreement shall be in force in said nation, except Section 14 of said last mentioned Act, which shall continue in force as if this agreement had not been made." The adoption of the Original Creek Agreement superceded the provisions of the Curtis Act, in all instances where the two were in conflict except with respect to Section 14 of the Curtis Act, which provided for the government of the cities and towns in the Indian Territory.²

§ 100. **Supplemental Agreement.**—A later treaty, called the Supplemental Creek Agreement was passed by Congress on June 30, 1902, ratified by the Tribe on July 26, 1902, and proclaimed by the President of the United States on August 8, 1902. By Section 21 thereof it was provided: "This Agreement shall be binding upon the United States, and the Creek Nation and upon all persons affected thereby when it shall have been ratified by Congress and the Creek National Council and the fact of such ratification shall have been proclaimed as hereinafter provided."

August 8, 1902, is therefore, the effective date of the Supplemental Agreement.³

By Section 20 of said Agreement it was provided, "This agreement is intended to modify and supplement the agreement ratified by said Act of Congress approved March 1, 1901, and shall be held to repeal any provision in that agreement, or in any prior agreement, treaty, or law in conflict herewith." As the Original Agreement superceded the Curtis Act, as to all provisions in which there was conflict, the Supplemental Agreement superceded both the Original

² Woodward v. DeGraffenreid, 238 U. S. 284, 59 L. Ed. 1310.

³ Washington v. Miller, 235 U. S. 422, 59 L. Ed. 295; McDougal v. McKay, 237 U. S. 372, 59 L. Ed. 1001.



§ 101

LANDS OF THE FIVE CIVILIZED TRIBES.

Agreement and those provisions of the Curtis Act, which were not repealed by the Original Agreement, where they were in conflict with it. The Original Agreement, as modified and supplemented by the Supplemental Agreement, except where in conflict therewith continued in effect.⁴

§ 101. **Persons Participating in Allotment.**—Congress has enacted various legislation for the purpose of enabling the Commission to determine the persons who were entitled to be placed upon the rolls of the various tribes. Section 28 of the Curtis Act provided with reference to the Creek Nation as follows:

“Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes except (Cherokees), eliminating from the tribal rolls names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have a full right thereto and their descendants born since such rolls were made.”

“The roll of Creek freedmen made by J. W. Dunn under the authority of the United States, prior to March 14, 1886, is hereby confirmed and said Commission is directed to enroll all persons now living whose names are found on said roll and all descendants born since the date of said roll, and to persons whose names are found thereon, with such persons of African descent as may have been rightfully admitted by the lawful authorities of the Creek Nation.

Section 28 of the Original Creek Agreement provided:

“All citizens who were living on the first day of January 1, 1899, entitled to be enrolled under Section 21 of the Act of Congress approved June 28, 1898, . . . shall be placed

⁴ *Hopkins v. United States*, 235 Fed. (CCA) 95; *United States v. Shock*, 187 Fed. (CC) 862, 870; *Texas Company v. Henry*, 34 Okla. 342, 126 Pac. 224; *Stephens v. Elliott*, 30 Okla. 41, 118 Pac. 342; *Blakemore v. Johnson*, 24 Okla. 544, 103 Pac. 554; *Bragdon v. Shea*, 26 Okla. 35, 107 Pac. 916; *Campbell v. Mosley*, 38 Okla. 132 Pac. 1098; *Alfrey v. Colbert*, 7 Ind. Ter. 338, 104 S. W. 631; *Alfrey v. Colbert*, 168 Fed. (CCA) 231; *Parks v. Berry*, 169 Pac. 1

upon the rolls to be made by said Commission under said act of Congress . . . All children born to citizens so entitled to enrollment, up to and including the first day of July, 1900 and then living, shall be placed on the rolls made by said Commission."

Under Section 7 of the Supplemental Agreement there was added to those entitled to enrollment and participation in the Creek lands, "all children born to those citizens who are entitled to enrollment as provided by the Act of Congress approved March 1, 1901, subsequent to July 1, 1900 and up to and including May 25, 1901, and living upon the latter day." Under the act of March 3, 1905, the rolls were further extended to include "children born subsequent to May 25, 1901, and prior to March 4, 1905 and living on said latter date to citizens of the Creek Tribe of Indians." Section 2 of the Indian appropriation act of April 26, 1906, added to the rolls children, "who were minors living March 4, 1906, whose parents had been enrolled as members of the Creek Tribe."

The Commission classified and enrolled the members and freedmen of the Creek Tribe who participated in the allotment of the lands of the tribe as follows: Creeks by blood; Creeks by blood, new born, under act March 3, 1905; Creeks by blood, minor children, under act April 26, 1906; Creek freedmen of the Creek Tribe who participated in the allotment of 1905; Creek Freedmen, minor children under act April 26, 1906.

§ 102. **Members by Blood.**—Unlike certain others of the Five Civilized Tribes, the Creek Nation had not admitted to membership persons not of Creek blood, by intermarriage. The rolls of said nation are divided into those of Creek blood and freedmen who were of African blood.

§ 103. **Freedmen.**—Prior to 1861 slavery existed in the Creek Nation and there were within the limits of such nation many persons of African blood who were held as

slaves. During the Civil War the Creeks like others of the Five Civilized Tribes threw in their lot with the Southern Confederacy and renounced allegiance to the United States. In 1866 the United States renewed its relation with the Creek Nation and confirmed their right to their lands. It was provided in such treaty that the former slaves then residing in said nation and such others as should return to such nation within a limited time should participate equally with the Creek Indians in the lands and money of said tribe. In the distribution of the lands, the former slaves under the title of Freedmen participated equally with the members by blood in the division of the land and money. They were enrolled separately however and were not Indians by blood.⁵

⁵ Nunn v. Hazelrigg, 216 Fed. (CCA) 330.

CHAPTER XIV.

CREEK—TITLE OF THE CREEKS.

- .04. Immigration to Indian Territory.
- .05. Grant by the United States.
- .106. Relinquishment of Interest of the United States.
- .107. Title of Allottee.

§ 104. **Immigration to Indian Territory.**—The Creeks at the time of the establishment of the government of the United States were inhabiting a territory which is now included within the States of Georgia, Alabama and Florida. The first treaty between the United States and the Creek Nation was that concluded on August 7, 1890, by which the boundaries of the Creek country were established. Numerous treaties were subsequently negotiated between them, on the terms of which the Creeks made cession of portions of their territory to the United States. The State of Georgia, where most of them resided, was exerting great pressure upon the government to remove all of the Indians from its border, and its influence found its first expression in the treaty concluded at Indian Springs on February 12, 1825, wherein it was recited:

“Whereas the said Commissioners on the part of the United States have represented to the said Creek Nation that it is the policy and earnest wish of the General Government, that the several Indian tribes within the limits of any of the States of the Union, should remove to territory to be designated on the west side of the Mississippi River, etc.”

By the terms of said Agreement the Creeks ceded to the United States their lands east of the Mississippi River, and the United States undertook to give them in exchange therefor, land of like quantity upon the Arkansas River,

west of the Mississippi. Warfare and contention broke out within the tribe, in consequence of such treaty, between the faction that supported the treaty, known as the McIntosh party, and the faction that opposed it. As a result of the opposition of a majority of the tribe, the treaty was by a subsequent one concluded on January 24, 1826, rescinded, and declared not to be binding on either party. The McIntosh faction, however, still desiring to emigrate west of the Mississippi, it was agreed that they should send a deputation of five persons to examine the Indian country west of the Mississippi, and the United States undertook to purchase for them a territory there proportionate to their number. The deputation thus provided for selected the country "West of the Territory of Arkansas lying and being along and between the Verdigris, Arkansas and Canadian Rivers," and the McIntosh faction of the Creek Nation immigrated thereto during the next year.

By the treaty of March 24, 1832, the Creeks, east of the Mississippi, ceded all of their lands to the United States. To those who would immigrate to the Creek country west of the Mississippi, the government agreed to pay the expense of removal. Those who desired to remain were permitted to do so and allotments were made to them. About 250 who refused to emigrate or to surrender their lands were removed to the Indian Territory by force. By 1838 practically all of the Creek Nation were settled in their homes.

§ 105. **Grant by the United States.**—By the treaty of February 14, 1833, the boundaries between the Creek and the Cherokees were definitely established and the country set aside to the Creeks was thus guaranteed to them.

"The United States will grant a patent in fee simple to the Creek Nation of Indians for the land assigned to them by this treaty or convention, whenever the same shall have been ratified by the president and senate of the United States—and the right thus guaranteed by the United

continued to said tribe of Indians, as long as they
 st as a nation, and continue to occupy the country
 assigned them."

On the eleventh day of August, 1852, the President of
 the United States executed a patent to the Creek Nation
 in which it was recited that the grantor "has given and
 granted and by these presents does give and grant unto
 the Muskogee (Creek) Tribe of Indians the tract of coun-
 try therein mentioned, to have and to hold the same unto
 said tribe of Indians so long as they shall exist as a
 nation and continue to occupy the country hereby assigned
 unto them."¹

The effect of the patent above mentioned was to vest in
 the Creek Nation, as a tribe or political society, a fee sim-
 ple in the lands included in said grant, subject only
 to the reversionary interest in the United States, upon the
 termination of the existence of the nation or their ceas-
 ing to occupy it.²

36. Relinquishment of Interest of the United States.

Section 15 of the Act of March 3, 1893, the first step
 toward the ultimate allotment of the lands of the Five
 Civilized Tribes in severalty, was taken. By said Section
 was enacted:

That the consent of the United States is hereby given to the
 allotment of lands in severalty, not exceeding 160 acres
 to one individual, within the limits of the country occu-
 pied by the Cherokees, Creeks, Choctaws, Chickasaws
 and Seminole, . . . and upon the allotment of the lands
 by said tribes respectively, the reversionary interest
 in the United States therein shall be relinquished and shall

¹ *Oppler's Laws and Treaties*, Vol. 2, pages 214, 264, 341, 388:
 . *Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *West-*
ern Investment Co. v. Tiger, 21 Okla. 630, 96 Pac. 602; *Godfrey v.*
Land & Trust Co., 21 Okla. 293, 95 Pac. 792.

² *See v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738;
Don v. Wellman & Rhoades, 205 Fed. (CCA) 895; *McDougal*
vs. Day, 43 Okla. 261, 142 Pac. 987.

And by Section 23 of the Original Creek Agreement was provided:

"All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment in full of all the right, title and interest of the United States in and to the lands embraced in his deed."

By virtue of such provisions, upon the allotment of lands of the Creek Nation to the individual members of the tribe, and the issuance of patents, the reversionary interest of the United States therein was extinguished.

Section 23, *supra*, further provided:

"Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all the lands of the tribe, as provided herein, and as a relinquishment of all his right, title and interest in and to the same, except the proceeds of lands reserved from allotment."

"The acceptance of deeds of minors and incompetents by persons authorized to select their allotments for them shall be deemed sufficient to bind such minors and incompetents to allotment and conveyance of all other lands of the tribe as provided herein."

§ 107. **Title of Allottee.**—By the allotment in severalty of the lands of the nation, the allottee was vested with the right, title and interest of the United States and the Creek Nation and its citizens in and to the land selected for allotment. His title was a fee simple one, subject to no restrictions upon alienation.³

The inalienability of the allotted lands does not affect the quality of the estate granted and is not inconsistent with a fee simple title.⁴

³ *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *In re Five Civilized Tribes*, 199 Fed. (DC) 811; *Choate v. Trapp*, 224 U. S. 67, 56 L. Ed. 941.

⁴ *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Noble v. United States*, 237 U. S. 74, 59 L. Ed. 844; *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *Chase v. United States*, 222 Fed. 543; *Western Investment Co. v. Tiger*, 21 Okla. 630, 96 Pac. 611.

CHAPTER XV.

CREEK—ALLOTMENT.

- 1. Standard Value of Allotment.
- 2. Homestead—Surplus.
- 3. Allotment Certificate.
- 4. Patent.
- 5. When Title Vests.
- 6. No Assignable Interest Prior to Selection.

108. **Standard Value of Allotment.**—By Section 3 of Original Agreement, it was provided that the standard size of an allotment should consist of 160 acres of land the appraised value of \$6.50 per acre, and that there should be allotted to each member of the tribe 160 acres of land in such manner as to give to each an equal share of the whole in value. It was further provided that an allottee selecting land of less value than \$6.50 per acre, should be entitled, at any time to select additional land which at its appraised value should make his allotment equal in value to the standard allotment. Any allottee selecting land at an appraised value in excess of the standard value, was to be charged with such excess in the subsequent distribution of the property and monies of the tribe. By Section 3 of Supplemental Agreement it was provided no allottee who selected an allotment of the standard value should receive any further distribution of the property or funds of the tribe until all other citizens should have received lands and money equal in value to his allotment.

109. **Homestead—Surplus.**—By Sections 7 of the Original Agreement and 16 of the Supplemental Agreement each member was required to select from his allotment, forty acres of land, as a homestead, for which a separate patent should be issued. There was no name applied in the treat-

ties to that part of the allotment remaining after the donation of the homestead. It has, however, been generally termed "surplus," and the words "homestead" and "surplus" occurring in the text books and decisions of the court have acquired a clear and well defined meaning.

§ 110. **Allotment Certificate.**—There is no provision either the Original or Supplemental Agreement providing for the issuance of allotment certificates although they were authorized by the treaties with most of the Five Civilized tribes. Certificates of allotment, however, were issued by the Commission under the rules and regulations prescribed by that office and had become so well recognized as a part of the machinery of allotment in the Creek Nation, that they were referred to in Section 19 of the Supplemental Agreement, in a manner that plainly recognized their use. Under the rules of the Commission the certificates were issued to the allottee after the expiration of nine months from the selection of his allotment in case a contest was filed against such selection.

It is well settled that an allotment certificate when issued, like a patent, is dual in its effect. It is an adjudication by the special tribunal empowered to decide the questions, that the party to whom it is issued is entitled to the land, and it is a conveyance of the right to this title to the allottee.¹

An allotment certificate, however, is merely evidence of the right of the holder to the selection and allotment of land therein described; it bestows no right of itself. Until the formal selection, in accordance with the rules of the Commission, and the expiration of the nine months period within which a contest might be filed, the right to an allotment became absolute, the allottee having done all that the law required to entitle him to the land selected as his allotment. The duty of executing and issuing allotment certificates

¹ Wallace v. Adams, 143 Fed. (CCA) 716; Bowen v. Carter, 42 Okla. 565, 144 Pac. 170; Frame v. Bivens, 189 Fed. (CC) 785; Thompson v. Hill, 48 Okla. 304, 150 Pac. 203.

s and patents, which conveyed the legal title to an allottee, was ministerial and could be enforced by mandamus.²

though the certificate of allotment is conclusive that the party to whom it is issued is entitled to the land, it was in the power of the Secretary of the Interior, as to the allottee or his heirs, upon proof of fraud or mistake in its issuance, to cancel such certificate. Also, upon notice, to strike the name of such holder from the rolls upon proof that he had been enrolled through fraud or mistake, and to void such certificate.³

In the absence of an agreement between the Commission and the allottee, where the right of third parties had not intervened, the allotment of lands for which certificates had issued might be set aside, the certificate cancelled, and the allottee permitted to make selection elsewhere.⁴

When, however, third parties, relying upon the evidence of the certificate, and without knowledge of the fraud by which the allotment had been secured, having paid their money in good faith, the name of the allottee can not be stricken from the rolls or the allotment certificate or patent cancelled, to the detriment.⁵

Under such circumstances, can the allottee relinquish his claim and make another selection in order to defeat the interests of third parties who have acquired rights therein.⁶

Illinger v. Frost, 216 U. S. 240, 54 L. Ed. 464; *United States v. Owen*, 220 Fed. (CCA) 277; *Frame v. Bivens*, 189 Fed. (CC) 785; *Mason v. Wellman & Rhoades*, 206 Fed. (CCA) 895; *White v. Buck*, 41 Okla. 50, 133 Pac. 223; *United States v. Whitmire*, 236 Fed. (CCA) 474.

Whe v. Fisher, 223 U. S. 95, 56 L. Ed. 364.

United States v. Dowden, 194 Fed. (CC) 475.

United States v. Jacobs, 195 Fed. (CCA) 707; *United States v. Hall*, 210 Fed. (CCA) 595; *United States v. Whitmire*, 236 Fed. (CCA) 474; *United States v. Wildcat*, 244 U. S. 111, 37 Supt. Ct. Rep.

United States v. Dowden, 194 Fed. (CC) 475; *United States v. Whitmire*, 236 Fed. (CCA) 474.

It has been held, however, that in the event of cancellation of allotment, lands selected in lieu thereof were not affected by conveyances executed as to lands surrendered.

§ 111. **Patent.**—By Section 23 of the Original Agreement it was provided:

“Immediately after the ratification of this agreement by Congress and the tribe, the Secretary of the Interior shall furnish the Principal Chief with blank deeds necessary for all conveyances herein provided for, and the Principal Chief shall thereupon proceed to execute in due form and deliver to each citizen who has selected or may hereafter select his allotment, which is not contested, a deed conveying to him all right, title, and interest of the Creek Nation and of all other citizens in and to the lands embraced in his allotment certificate, and such other lands as may have been selected by him for equalization of his allotment.

“The Principal Chief shall, in like manner and with like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands or town lots to be conveyed to any one person shall, so far as practicable, be included in one deed, and all deeds shall be executed free of charge.

“All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.”

The effect of the execution and delivery of the patent was to vest the legal title to the land selected as an allotment in the allottee.

§ 112. **When Title Vests.**—Upon the selection of the land as an allotment by a member of the tribe, in accordance with the rules of the Commission, the allottee was

7 Mullen v. Pickens, 155 Pac. 871; Mullen v. Gardner, 156 Pac. 1160.

with an equitable title to the land so selected which, in the absence of restrictions upon its alienation, would support a conveyance.⁸

was sufficient to enable allottee to maintain an action for the land.⁹

upon removal of such restrictions thereafter the land was alienable, although no patent had issued.¹⁰

The fact that the application was subject to contest during the period of nine months in no way affected the allottee's interest in the land so selected. The patent issued subsequently by relation became effective as of the date of the selection.¹¹

No Assignable Interest Prior to Selection.—Prior to the allotment of his allotment and the segregation of the land from the public domain of the nation, a member entitled to allotment had no right or interest that was assignable by conveyance. As stated by the Supreme Court of the United States in the case of *Franklin v. Lynch*, 233 U. S. 9.

"The distinction between an allottee and a member is substantial but was made in recognition of a definite policy of the Government as to their land. As the tribe could not, neither could any individual member, prior to selection, make a contract of conveyance of any interest in the tribal land. He had neither an undivided interest in such tribal land nor a vendible interest in any particular tract."

Therefore, a deed to unsegregated land of the tribe, in violation of its selection as an allotment, is void, as is

Franklin v. United States, 224 U. S. 448, 56 L. Ed. 834; *Ballinger v. United States*, 224 U. S. 240, 54 L. Ed. 464; *Gritte v. Fisher*, 224 U. S. 640, 56 L. Ed. 464; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *United States v. Dowden*, 220 Fed. (CCA) 277.

United States v. Jones, 26 Okla. 569, 110 Pac. 743.

United States v. Armstrong, 44 Okla. 637, 146 Pac. 34.

United States v. Wellman & Rhoades, 206 Fed. 895; *Godfrey v. Iowa Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Wood v. Gleason*, 42 Okla. 418.

also the attempted conveyance, before selection, of the Indian right of participation in the allotment of the lands of the nation, as against governmental policy.¹²

And a provision in a deed by the heirs of an allottee whose selection had been made after his death by an administrator, that if for any reason the allotment should be canceled, the conveyance should be effective as to any land selected in lieu of the lands conveyed, was void and conveyed no interest in such lands.¹³

Nor did a member before selection of his allotment have any right or interest that he could devise by will (see *Willis*).

Such contract of conveyance before selection, being against governmental policy, subsequently acquired title by allotment, to the land attempted to be conveyed, was not inure to the benefit of the vendee, under Section 64 Chapter 27, *Manfield's Digest of the Statutes of Arkansas* in force in the Indian Territory prior to statehood, which provided:

"If any person shall convey any real estate, by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such land, but shall afterwards acquire the same, the legal or equitable estate afterwards acquired shall immediately pass to the grantee and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance."¹⁴

¹² *Franklin v. Lynch*, 233 U. S. 269, 53 L. Ed. 954; *Gritts v. Fisher*, 224 U. S. 640, 56 L. Ed. 928; *Goat v. United States*, 224 U. S. 458, L. Ed. 841; *McKee v. Henry*, 201 Fed. (CCA) 74; *McWilliams & Co. v. Livingston*, 22 Okla. 884, 98 Pac. 914; *Godfrey v. Iowa Land & Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Casey v. Bingham*, 37 Okla. 484, 132 Pac. 663; *Lynch v. Franklin*, 37 Okla. 60, 130 Pac. 599.

¹³ *Mullen v. Gardner*, 156 Pac. 1160; *Robinson v. Caldwell*, 55 Okla. 701, 155 Pac. 547; *Mullen v. Pickens*, 155 Pac. 871.

¹⁴ *Bledsoe v. Wortman*, 35 Okla. 261, 129 Pac. 841; *Berry v. Somers*, 35 Okla. 426, 130 Pac. 152; *Franklin v. Lynch*, 233 U. S. 269, L. Ed. 954; *Robinson v. Caldwell*, 55 Okla. 701, 155 Pac. 547; *Willis v. Adams*, 164 Pac. 113.

Nor will the allottee be estopped by his covenant of warranty contained in deed made prior to selection of allotment.¹⁵

While a contract to convey made before allotment is void and cannot be enforced, it is not illegal nor immoral, and a deed made after allotment in pursuance of a contract entered into before allotment, is valid.¹⁶

¹⁵ *Starr v. Long Jim*, 227 U. S. 613, 57 L. Ed. 613; *Monson v. Simonson*, 231 U. S. 341, 58 L. Ed. 260; *Berry v. Summers*, 35 Okla. 426, 130 L. 152.

¹⁶ *Casey v. Bingham*, 37 Okla. 484, 132 Pac. 663.

CHAPTER XVI.

CREEK—RESTRICTIONS UPON ALIENATION.

ALLOTTED LAND.

- § 114. Scope of Title.
- 115. Restrictions Applicable.
- 116. Homestead.
- 117. Surplus.
- 118. Minors.
- 119. Voluntary Alienation Comprehended by Restrictions.
- 120. Involuntary Alienation.
- 121. Removal of Restrictions Did Not Affect Exemption.
- 122. Effect of Transactions in Violation of Restrictions.
- 123. Act of April 21, 1904.
- 124. Minors.
- 125. Involuntary Alienation.
- 126. Act of April 26, 1906.
- 127. Status of Allotted Land Prior to Act of May 27, 1908.

§ 114. **Scope of Title.**—Allotted land is that which was selected by or patented to an allottee as his proportionate part of the common domain of the tribe of which he was a member. The term "inherited land" is used to denote such land of the tribe as came to an heir, not by reason of his membership in the tribe, but by inheritance or devise from an allottee. It is important to keep this distinction in mind as the restrictions applicable to them are very dissimilar. The present chapter is devoted to a consideration of restrictions upon allotted land.

§ 115. **Restrictions Applicable.**—The restrictions applicable to the lands of the Creek Nation were embodied in Section 7 of the Original Agreement and Section 16 of the Supplemental Agreement. The two sections with reference to the periods of restriction are almost identical, except that the five year period of restriction in each case dated from the ratification or approval of the respective agreements.

period of more than a year separated these dates. The exemption from involuntary sale or incumbrance provided in the Supplemental Agreement is much broadened than the one contained in the Original Agreement. By the latter the exemption applied only to "any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor," while in the former the period of exemption coincided with the period of restriction upon voluntary alienation.

Inasmuch as Section 20 of the Supplemental Agreement provided that its terms should supercede the Original Agreement in case of conflict, there seems to be no doubt that Section 16 supercedes, where it does not agree with Section 7 of the Original Agreement. Section 16 has always been treated by the courts as embodying the restrictions upon alienation applicable to the lands of the tribe.¹

The restrictions applied equally to all members to whom allotments were made. Members by blood, adopted citizens and freedmen were all members of the tribe and received their allotments subject to the same restrictions upon its alienation. Indian blood and the quantum thereof is important in considering the subsequent legislation of Congress, but is immaterial in considering the restrictions imposed by the Original and Supplemental Agreements.

§ 116. **Homestead.**—By Section 16 of the Supplemental Agreement provision was made for the designation of a homestead out of the allotment, consisting of 40 acres which shall be and remain non-taxable, inalienable and free from any incumbrance whatever for twenty-one years from the date of the deed therefor." The same Section provided "lands allotted to citizens shall not in any manner whatever or at any time be incumbered, taken or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years

¹ *Skelton v. Dill*, 235 U. S. 206, 59 L. Ed. 198; *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738.

from the date of the approval of this Supplemental Agreement." It is obvious that the homestead was included within the terms "lands allotted to citizens" and was, therefore, restricted for five years from the date of the approval of the Supplement Agreement under that provision and for 21 years from the date of his patent under the provision applicable only to the homestead. And such has been the holding of the courts. But inasmuch as the latter provision is more comprehensive than the former the question is unimportant except in considering the alienation of inherited homesteads.²

§ 117. **Surplus.**—The provision of Section 16 applicable to the restriction upon the surplus is as follows:

"Lands allotted to citizens shall not in any manner whatever, or at any time be encumbered, taken or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this Supplemental Agreement, except with the approval of the Secretary of the Interior."

Under said provision the surplus was restricted until August 8, 1907, and alienable thereafter.³

§ 118. **Minors.**—Section 4 of the Original Agreement provided:

"Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority."

There was no similar provision to the above in the Supplemental Agreement, and not being inconsistent with the

² *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *Western Investment Co. v. Tiger*, 21 Okla. 630, 96 Pac. 602; *Oates v. Freeman*, 157 Pac. 74; *In re Five Civilized Tribes*, 199 Fed. (DC) 811.

³ *Washington v. Miller*, 235 U. S. 422, 59 L. Ed. 295; *McDougal v. McKay*, 227 U. S. 372, 59 L. Ed. 1001; *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *Skelton v. Dill*, 235 U. S. 206, 59 L. Ed. 198; *Hopkins v. United States*, 235 Fed. (CCA) 95; *Carter v. Prairie Oil & Gas Co.*, 160 Pac. 319; *Williams v. Diesel*, 165 Pac. 187.

reement was not superceded or repealed thereby. Section 16 constitutes an additional restriction upon land applicable to the lands of minors and is the only one in the treaties with any of the tribes where minors made a term of restriction. There should accordingly be added to the restrictions embodied in Section 16 Supplemental Agreement, a proviso that the allotment including both homestead and surplus of minors not be sold during minority.⁴

Voluntary Alienation Comprehended by Restriction

The prohibition against voluntary alienation applies to attempted conveyance or incumbrance of the fee or other interest or estate, corporeal or incorporeal, growing or incidental to the ownership thereof. It includes gift;⁵ option to purchase;⁶ mortgage;⁷ contract of sale;⁸ deed of attorney;⁹ sale of timber on land, except when the timber is merely incidental to putting the land in production;¹⁰ will (see Wills); oil and gas lease (see Oil and Gas Leases); agricultural lease (see Agricultural Leases); payment of royalties due under mining claim (see Oil and Gas Leases); assignment of rents and profits of lease for agricultural purposes.¹¹

McMurry v. Johnson, 24 Okla. 544, 103 Pac. 554; *Bragdon v. McMurry*, 35 Okla. 107, 107 Pac. 916; *Hopkins v. United States*, 235 Fed. 100; *United States v. Shock*, 187 Fed. (C.C.) 862, 870; *Texas v. Henry*, 34 Okla. 342, 126 Pac. 224; *Stevens v. Elliott*, 30 Okla. 118, 118 Pac. 407; *Campbell v. Mosley*, 38 Okla. 374, 132 Pac. 100; *Rey v. Colbert*, 168 Fed. (CCA) 231; *Alfrey v. Colbert*, 7 Ind. 104 S. W. 638; *Parks v. Berry*, 169 Pac. 884.

Wright v. Jones, 51 Okla. 639, 151 Pac. 845.

Wright v. Stonebraker, 28 Okla. 75, 113 Pac. 903.

Wright v. Yarbrough, 44 Okla. 375, 144 Pac. 1030; *Butterfield v. Wright*, 50 Okla. 381, 150 Pac. 1078.

Wright v. Kelley, 29 Okla. 809, 120 Pac. 293.

Wright v. Oliver, 46 Okla. 683, 148 Pac. 709.

Wright v. Brower, 184 Fed. (DC) 342; *Mitchell-Crittenden Tie Co. v. Wright*, 160 Pac. 917.

Wright v. Childers, 157 Pac. 948.

§ 120. **Involuntary Alienation.**—The restrictions upon alienation protect the lands of the allottee not only against voluntary alienation, but against involuntary sale, lien or encumbrance upon any obligation contracted during the restricted period.

Section 16 of the Supplemental Agreement provides:

“Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken or sold to secure or satisfy any debt or obligation, nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this Supplemental Agreement except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment 40 acres of land or a quarter of a quarter section, as a homestead, which shall be and remain non-taxable, inalienable, and free from any incumbrance whatever for 21 years from the date of the deed therefor, etc.”

Such provisions are dual in their effect. They constitute a restriction upon voluntary alienation and in addition a take of the nature of an exemption.¹²

By virtue of said sections, the lands of an allottee are protected from all manner of involuntary lien or incumbrance contracted during the restricted period; and upon his death descend to his heirs free from all such debts and obligations.¹³

And the sale of the lands of an allottee, by his administrator for the purpose of paying debts contracted by

¹² *Western Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 479; *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washburn's Estate*, 36 Okla. 559, 128 Pac. 1079.

¹³ *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *In re Washburn's Estate*, 36 Okla. 559, 128 Pac. 1079; *In re Davis' Estate*, 45 Okla. 209, 122 Pac. 547; *Redwine v. Ansley*, 32 Okla. 317; *Cherokee Lumber Co. v. Coleman*, 156 Pac. 222; *Eastern Oil Co. v. Harjo*, 156 Pac. 921; *Barnard v. Bilby*, 171 Pac. 444.

g the restricted period, is void and confers no rights the purchaser.¹⁴

h lands are not affected nor can they be taken or sold judgment founded on contract¹⁵ or tort.¹⁶ They cannot ojected to any kind of lien by order of court,¹⁷ and a ent of partition or one decreeing a lien in a suit for y is null and void.¹⁸ They are not subject to material lien,¹⁹ nor to lien of occupying claimant under Section Rev. Laws 1910.²⁰ And such exemptions extend not o the land itself, but to the rents and profits accruing rom.²¹

21. Removal of Restrictions Did Not Affect Exemp-

-From the dual nature of the restrictions upon alien- it has been held that a removal of restrictions by the ary of the Interior was effective only as to voluntary tion, and that the exemption from forced sale would 1 unless expressly made a part of the order of re-
22

ke effect has been given to the Act of April 21, 1904. Act removed the restrictions upon the voluntary alien- of the surplus allotments of members not of Indian but left unimpaired the exemption against involun- lienation theretofore in effect.²³

stern Oil Co. v. Harjo, 157 Pac. 521; *In re French's Estate*, 45 19, 147 Pac. 319.

stern Investment Co. v. Kistler, 22 Okla. 222, 97 Pac. 588.

llen v. Simmons, 234 U. S. 192, 58 L. Ed. 1274; Choctaw Lum- v. Coleman, 156 Pac. 222.

er v. Reed, 159 Pac. 499.

lders v. Childers, 163 Pac. 948, 157 Pac. 938; Burney v. Bur- 0 Pac. 85.

l v. Ingersol, 27 Okla. 117, 111 Pac. 214.

vens v. Amos, 166 Pac. 140.

lders v. Childers, 157 Pac. 938, 163 Pac. 948; Burney v. Bur-) Pac. 85; Redwine v. Ansley, 22 Okla. 317, 122 Pac. 679.

stern Investment Co. v. Kistler, 22 Okla. 222, 97 Pac. 588.

re Davis' Estate, 32 Okla. 209, 122 Pac. 547.

§ 122. **Effect of Transactions in Violation of Restrictions.**—Section 16 of the Supplemental Agreement, providing the restrictions upon alienation to which the Creek allottee were subject, declares the effect of agreements or transactions in violation thereof as follows:

“Any agreement or conveyance of any kind or character, violative of any of the provisions of this paragraph, shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.”

Section 16 as it appears in the Supplemental Agreement is structurally composed of two paragraphs and it has been contended that the provision above quoted applied to the latter paragraph of this Section and not to the former. It is well settled, that the word “paragraph” as there used was synonymous with ‘section’ and that the provision applied to all of Section 16.²⁴

All contracts or conveyances in violation of such restrictions, are by express provisions, not voidable only, but absolutely void and incapable of ratification, and no rule of estoppel may be asserted against their invalidity.²⁵

Such contracts are void not because they are unenforceable, illegal, but because they are prohibited by express statutory provision and are in defiance of governmental policy. If the contract is immoral or illegal, the consideration received by the allottee thereon may be recovered upon its repudiation by him, provided he has property subject to execution other than his restricted land. Recourse may not be had to

²⁴ *Nunn v. Hazelrigg*, 216 Fed. (CCA) 330; *Alfrey v. Colburn*, 216 Fed. (CCA) 231; *Barnes v. Stonebraker*, 28 Okla. 75, 113 Pac.

²⁵ *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 820; *Heckman v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Nunn v. Hazelrigg*, 216 Fed. (CCA) 330; *Carter v. Prairie Oil & Gas Co.*, 157 Pac. 319; *Oates v. Freeman*, 157 Pac. 74; *Berry v. Sumner*, 130 Okla. 426, 130 Pac. 152.

against his restricted land, which would involve indirectly an alienation of such land.²⁶

The Supreme Court of Oklahoma in construing the Choctaw-Chickasaw treaties has held in several cases, following *Gre v. Brown*, 7 Ind. Ter. 675, 104 S. W. 877, decided by the Court of Appeals of the Indian Territory, that contracts and conveyances in violation of the restrictions imposed by these treaties were not only void, but illegal; and that they were incapable of ratification and that the consideration could not be recovered upon its repudiation.

§ 123. Act of April 21, 1904.—Under the treaties by which the lands of the Creeks were allotted in severalty, and disregarding subsequent legislation, the land, other than homestead, allotted to each member of the tribe, was subject to unrestricted alienation on August 7, 1907, five years from date of the approval of the Supplemental Agreement. On April 21, 1904 Congress enacted as follows:

“And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians, who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, etc.”

The effect of the Act was to render the surplus allotments of all adult non-Indian citizens free from any restriction upon their voluntary alienation. Such citizens were thereupon authorized to convey the fee or any lesser estate therein. This was applicable to all adult citizens who were not of Indian blood and among the Creeks included adopted citizens not of Indian blood and freedmen.²⁷

²⁶ *Tate v. Gaines* 25 Okla. 141, 105 Pac. 193.

²⁷ *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Tiger v. Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *United States v. Jacobs*, 195 Fed. (CCA) 707; *Alfrey v. Colbert*, 168 Fed. 2; *Godfrey v. Iowa Land & Trust Co.*, 21 Okla. 293, 95 Pac. 792; *Williams Investment Co. v. Livingston*, 22 Okla. 884, 98 Pac. 914; *McMore v. Johnson*, 24 Okla. 544, 103 Pac. 554; *Rentle v. McCoy*, Okla. 77, 128 Pac. 244; *Benadnum v. Armstrong*, 44 Okla. 637, 132 Pac. 34; *Loman v. Paullin*, 51 Okla. 294, 152 Pac. 73.



The word "allottee" used in said act signifies a member of the tribe to whom an allotment had been made or had selected such allotment. The act did not apply to one who had not made his selection, although a member belonging to the class whose allotment, if selected, would be in virtue of the above act free from restrictions on alienation. Prior to selection of allotment, notwithstanding the passage of said act, he was powerless to make a valid conveyance.²⁸

§ 124. **Minors.**—The act specifically excepted minors from its operation. It was only by reason of their minority and inexperience that they were excepted from the provisions that applied to adult members of their class. When their attaining their majority, after the passage of said act, the reason for their exclusion was removed. It has therefore been held that the restrictions were removed by said act upon the surplus allotments of non-Indian members, who were minors at the time of its passage, upon attaining their majority thereafter.²⁹

§ 125. **Involuntary Alienation.**—The above act in removing the restrictions upon voluntary alienation did not affect the exemption against involuntary alienation provided in Section 16 of the Supplemental Creek Agreement. Prior to the passage of said act, as before, the surplus lands of non-Indian allottees were protected against any manner of forced sale or incumbrance contracted prior to the time the land could have been alienated under the treaty.³

²⁸ *Franklin v. Lynch*, 233 U. S. 269, 58 L. Ed. 954; *Parkinson v. Skelton*, 33 Okla. 813, 128 Pac. 131; *Lynch v. Franklin*, 37 Okla. 130 Pac. 599.

²⁹ *United States v. Shock*, 187 Fed. (CC) 362, 870; *Chas. Thornberg*, 44 Okla. 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 144 Pac. 1058; *Thraves v. Greenlees*, 42 Okla. 764, 142 Pac. 1058.

³⁰ *In re French's Estate*, 45 Okla. 819, 147 Pac. 319; *West Investment Co. v. Kistler*, 22 Okla. 222, 97 Pac. 538.

§ 126. **Act of April 26, 1906.**—After the Act of April 3, 1904, no further acts of Congress removing restrictions upon allotted lands were passed until the Act of May 27, 1908. The Act of April 26, 1906 removed restrictions upon inherited lands, but not upon allotted lands. On the other hand, the last mentioned act extended the restricted periods upon both surplus and homestead lands of all full blood Indians, and abolished the difference in respect to restricted periods that had theretofore obtained between the two divisions of the allotment.

Part of Section 19 of the Act of May 26, 1906 is as follows:

"That no full blood Indian of the Choctaw, Chickasaw, Creek, or Seminole Tribes shall have power to lease, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of 25 years from and after the passage and approval of this act, unless such restrictions shall, prior to the expiration of said period, be removed by act of Congress."

The constitutionality of the extension of the restricted period, when the land was at the time already subject to restrictions is well settled.³¹

The restrictions upon none of the allotted land of the Creek Nation had expired on April 26, 1906, and it is therefore clear that Congress had authority to enlarge such restricted period. The passage of such act rendered the allotted lands, both surplus and homestead, of full blood Creek Indians inalienable until April 26, 1931.

§ 127. **Status of Allotted Land Prior to Act of May 27, 1908.**—The status of allotted lands with reference to alienation just prior to taking effect of Act of May 27, 1908, may be summarized as follows:

Hager v. Western Inv. Co., 221 U. S. 286, 55 L. Ed. 738; *Heck v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Charles v. Bell*, 134 U. S. 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 370, 144 Pac. 1033.

The surplus allotments of all adult members, not of Indian blood, were alienable after April 21, 1904.

The surplus allotments of minors, not of Indian blood, were alienable upon their attaining their majority after April 21, 1904.

The surplus allotments of all adult members, except half-bloods, were alienable after August 7, 1907.

The surplus allotments of minors of Indian blood, less than full bloods, were alienable after August 7, 1907, upon their attaining their majority.

The surplus allotments of full bloods were restricted until April 26, 1931.

The homestead allotments of all allottees, except half-bloods, were restricted for a period of 21 years from the dates of the respective patents.

The homestead allotments of full bloods were restricted until April 26, 1931.

CHAPTER XVII.

CREEK—RESTRICTIONS UPON ALIENATION —INHERITED LAND.

1. Division of Subject.
2. Where Member Died Prior to Selection of Allotment.
3. Allotments to New Born Children.
4. What is "Receiving His Allotment"?
5. Selection of Allotment Under Curtis Act.

LANDS ALLOTTED TO LIVING MEMBERS.

1. Restrictions Applicable.
2. Homestead Allotments.
3. Homestead—Minor Children Born Subsequent to May 25, 1901.
4. Homestead—Alienation by Devisee.
5. Surplus Allotments.
6. Surplus—Act of April 21, 1904.
7. Minors.
8. Status of Inherited Land Prior to April 26, 1906.

128. **Division of Subject.**—In discussing the restriction upon the alienation of inherited land of the Creek Nation we are met upon the threshold with the necessity of dividing the subject into two classes, as follows:

1st. Lands of members who died prior to selection of allotment and to whom lands were allotted after death, under Section 28 of the Original Agreement, and Sections 7 and 8 of the Supplemental Agreement.

2d. Lands of allottees who died subsequent to selection of their allotment.

29. **Where Member Died Prior to Selection of Allotment.**—In order to fix the date as to which allotments

should be made Section 28 of the Original Creek Agreement provided for allotment to all members of the Tribe who were living on April 1, 1899 (the date of the opening of the office for allotment by the Dawes Commission), and all children born to such citizens so entitled to allotment, up to and including July 1, 1900, and living on that date. The Supplemental Agreement changed the latter date by declaring in Sections 7 and 8 that enrollment should include all children born to members up to and including May 25, 1901, and living on the latter date. Children born after July 1, 1900, and dying before May 25, 1901, were not entitled to allotment. Evidently anticipating that participation in the allotment and distribution might, in some instances, be cut off by death, Congress made provision for such contingencies. Section 28 of the Original Agreement provided:

“And if any such citizen has died since that time (April 1, 1899), or may hereafter die, *before receiving his allotment of lands* and distributive share of all the funds of the Tribe, the lands and money to which he would be entitled if living, shall descend to his heirs, according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.”

Sections 7 and 8 of the Supplemental Agreement did not change the above provision, but amended the Section with respect to children born to citizens by substituting May 25, 1901 for July 1, 1900. In case of the death of any such child thereby authorized to be enrolled, before allotment was to be made in his behalf after his death. The question arose whether allotments made on behalf of deceased members who had not made their selections before death under the above sections were subject to the restriction upon alienation imposed by Section 16 of the Supplemental Agreement, upon “lands allotted to citizens.” It has been definitely and finally settled that such restrictions were applicable only to allotments made to living members in their own right and did not apply to lands allotted

of deceased members. Such lands, both, surplus and homestead, passed to the heirs free from restrictions of any

30. **Allotments to New-Born Children.**—By the Act March 3, 1905 the rolls of those entitled to participate in allotment of lands were further extended to include children born subsequent to May 25, 1901 and prior to March 4, 1905, and living on the latter date." By Act of March 26, 1906, they were to include "minors living March 3." These acts merely amended the Original and Supplemental Agreements so as to extend the benefits of allotment to such members, and its effect was to substitute Section 7 of the Supplemental Agreement "March 4, 1905" for "May 25, 1901." Allotments to such new members were made in all respects in accordance with the Supplemental Agreement and subject to the restriction upon allotment imposed by Section 16 thereof. In case an allotment was selected for such new member prior to his death, the allotment descended to his heirs, subject to the restriction therein imposed, and the restricted period applied from August 2, 1906, regardless of the time of his enrollment or of the date of the selection of his allotment. If he died before selecting his allotment, both surplus and homestead, descended to his heirs, free from restrictions, as provided in Section 16 of the Original Agreement and Sections 7 and 8 of the Amended Agreement.²

It was the practice of the Commission, in some in-

¹ *Wright v. Dill*, 235 U. S. 206, 59 L. Ed. 198; *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *Harris v. Bell*, 235 Fed. (DC) 209; *Reed v. Welty*, 197 Fed. (DC) 419; *Rentle v. Ooy*, 35 Okla. 77, 128 Pac. 244; *Parkinson v. Skelton*, 33 Okla. 131; *Young v. Chapman*, 130 Pac. 289; *Deming Investment Co. v. Bruner Oil Co.*, 35 Okla. 395, 130 Pac. 1157; *McNac v. Oates*, 38 Okla. 321, 132 Pac. 1088; *Bilby v. Gilliland*, 41 Okla. 678, 132 Pac. 687; *Oates v. Freeman*, 157 Pac. 74; *McCosar v. Chapman*, 157 Pac. 1059; *Moffett v. Conley*, 163 Pac. 118.

² *Wright v. Bell*, 235 Fed. (DC) 626, 250 Fed. (CCA) 209.

stances, to issue homestead and surplus patents to allottees who died before selection, as if they were issued to living members; and especially was this the case after the passage of the Act of April 26, 1906.

This practice of the Commission did not change the status of the land, and when the allottee died before selection, the land descended to his heirs unrestricted, and a designation of part of the land as homestead was immaterial.³

§ 131. What is "Receiving His Allotment"?—The test of whether the lands descended to the heirs unrestricted, within the holding of the above cases, is contained in the following provisions of Section 28 of the Original Agreement and Sections 7 and 8 of the Supplemental Agreement:

"And if any such citizen has died since that time, or may hereafter die, *before receiving his allotment of land*, and distributive share of all funds of the Tribe, etc."

A selection of allotment, under the rules and regulations of the Commission, was a segregation of the land from the public domain of the nation, and vested in the member so selecting it an equitable title in the land, which was converted into a fee simple title upon the issuance of patent. The patent, however, related back to the selection, which was the inception of the title. Undoubtedly one who had selected lands for allotment, unless subsequently successfully contested within the time prescribed by the rules of the Commission, "had received his allotment of land" within the meaning of the above provisions, whether the certificate of allotment or patent had issued or not. If he died before segregation of the land from the public domain by selection, the allotment to which he was entitled descended to his heirs, unaffected by the restrictions imposed by Section 16 of the Supplemental Agreement. If he died aft

³ Hawkins v. Okla. Oil Co., 195 Fed. (CC) 345.

at time, although before issuance of certificate of allotment or patent, it descended to his heirs subject to the restrictions imposed therein.

§ 132. **Selection of Allotment Under Curtis Act.**—The Original Creek Agreement was ratified by the Creeks and became effective on May 25, 1901. Allotments made prior to the above date were made under Section 11 of the Act of June 28, 1898, commonly called the Curtis Act. Section 6 of the Original Agreement, confirmed all allotments therefore made under Section 11 of the Curtis Act, and provided that they should be on the same footing as allotments made subsequent to the adoption of that agreement. The question had arisen as to whether a selection of an allotment under said Section 11, where the allottee died before May 25, 1901, the date of the ratification of the Agreement, was a "receiving of his allotment" within the meaning of Section 28 of the Original Agreement and Sections 7 and 8 of the Supplemental Agreement. In the case of *Reed v. Felty*, 197 Fed. 419, it was held by Judge Campbell, of the Eastern District of Oklahoma, that such selection did not constitute a "receiving of his allotment" and that the lands selected descended to his heirs, free from restriction. The above case was reversed by the Circuit Court of Appeals for the eighth Circuit, in 219 Fed. 864, in which the opposite conclusion was reached, which later holding was followed by the same court in *United States v. Western Inv. Co.*, 226 Fed. (CCA) 726. The Supreme Court of the United States, in the case of *Woodward v. De Graffenreid*, 238 U. S. 284, 59 L. Ed. 1310, held that an allotment, under the Curtis Act, conveyed only a provisional surface right to the land so selected which was not inheritable; that upon the option of the Original Agreement, by virtue of Section 6 thereof, the allotment so made was confirmed and ratified and the lands thereafter inheritable, but such lands descended to the heirs, not under the laws of descent and distribution in force in the Creek Nation at the time the allot-

ment was made, but according to the laws in force at the time of the adoption of the Original Agreement. Upon the announcement of the decision in Woodward v. De Graffenreid, the Circuit Court of Appeals granted a rehearing in Welty v. Reed, and in 231 Fed. 930, the former holding was reversed and the decision of the District Court affirmed. Upon such rehearing the Court held that a member who selected his allotment under the Curtis Act and died before May 25, 1901, had not "received his allotment of land" within the meaning of Section 28 of the Original Agreement, and that in such case the land descended to his heirs unrestricted. This holding was reaffirmed by the Circuit Court of Appeals in Sunday v. Mallory, 237 Fed. 526, overruling United States v. Western Investment Company, 226 Fed. 726, which had based its conclusion upon the first decision of the Circuit Court of Appeals in Welty v. Reed, *supra*. This conclusion seems to follow as a necessary result of the rule announced in Woodward v. De Graffenreid, *supra*, and is undoubtedly the correct one.

LANDS ALLOTTED TO LIVING MEMBERS.

§ 133. **Restrictions Applicable.**—The restrictions imposed by Section 7 of the Original Agreement are almost identical with those provided by Section 16 of the Supplemental. The period of restriction under each however, dated from the ratification of the respective agreements and there was more than a year between these dates. There are several authorities holding that the restrictions imposed by Section 7 applied to the allotments selected thereunder, by citizens who died before the adoption of the Supplemental Agreement, and that the restriction imposed by Section 16 applied to allotments made to or in behalf of citizens living after its adoption.⁴

⁴ United States v. Western Investment Co., 226 Fed. (CCA) 726; Reed v. Welty, 197 Fed. (DC) 419; Hawkins v. Okla. Oil Co., 136 Fed. (CC) 345.

The point mentioned was not the ultimate question for decision in those cases and it is not believed that the rule pronounced by them is the true one. Section 20 of the Supplemental Agreement provided that it should supercede the Original Agreement when there was conflict, and further provided that that agreement should be binding upon the United States, the Creek Nation and all persons affected thereby. It has been many times held that Section 6 of the Supplemental Agreement superceded Section 7 of the Original Agreement, without exception as to the date of the death of the allottee. And the Supreme Court of the United States held in a case that involved an allotment of a citizen who died after the adoption of the Original Agreement and before the ratification of the Supplemental Agreement, that the restricted period expired on August 1, 1907, the date prescribed by the Supplemental Agreement.⁵

The question is not important with respect to the 21 year period applicable to the homestead but might be very material in considering the five year period of restriction.

§ 134. **Homestead Allotments.**—By Section 16 of the Supplemental Agreement it was provided: "Lands allotted citizens shall not in any manner whatever or at any time encumbered, taken or sold nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this Supplemental Agreement." By a further provision of said section applicable only to the homestead it was provided: "which shall be and remain non-taxable, inalienable and free from any encumbrance whatever for twenty-one years from the date of the approval therefor." It is obvious that the homestead was included within the terms "lands allotted to citizens" and was therefore restricted in the allottee and his heirs for a period of five years from the date of the approval of the Supplemental Agreement under that provision, and for

⁵ Skelton v. Dill, 235 U. S. 206, 59 L. Ed. 198.

twenty-one years from the date of his patent under the ~~vision~~ vision applicable only to the homestead.⁶

The homestead, under the Choctaw-Chickasaw Agreement descended to the heirs unrestricted, but such ~~visions~~ ~~visions~~ are not authorities in construing the Creek Agreement. The Choctaw-Chickasaw Supplemental Agreement provided that the homestead "shall be inalienable *during lifetime of the allottee*, not exceeding twenty-one years ~~from~~ the date of the certificate of allotment." There is no ~~qualification~~ qualification in the twenty-one-year provision applicable the Creek homestead, and in addition such homestead ~~was~~ expressly restricted in the allottee and *his heirs* for five years from the approval of the Supplemental Agreement. ~~But~~ nevertheless, it has been held that the homestead, upon the death of the allottee descended to his heirs free from restrictions.⁷

This holding is predicated upon the latter part of Section 16 as follows:

"The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue, then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed."

By construing "limitation" as "restriction" the homestead, in the heirs, is taken out of the earlier parts of the same section by which restrictions are imposed for periods of five and twenty-one years respectively. But it seems very doubtful whether the word limitation, in this connection

⁶ Tiger v. Western Investment Co., 221 U. S. 286, 55 L. Ed. 733; United States v. Cook, 225 Fed. (CCA) 756; *In re Five Civilized Tribes*, 199 Fed. (DC) 811; Oates v. Freeman, 157 Pac. 74; Western Investment Co. v. Tiger, 21 Okla. 630, 96 Pac. 602.

⁷ United States v. Cook, 225 Fed. (CCA) 756; Oates v. Freeman, 157 Pac. 74.

, is susceptible of the construction given it. The word used twice in such section. It first occurs in this connection: "but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed." To what limitation was reference made? The courts, in holding the homestead alienable, construe it to mean the restrictions on alienation imposed upon the allottee, and his heirs, in the first part of the section. It is obvious, however, that it referred to the provision which had just preceded it, to-wit: "The homestead . . . shall remain after the death of the allottee, for the use and support of children born to him after May 25, 1901." If he had such children he could not devise his homestead by will, because it was entailed for their use and support. If he had no children born subsequent to May 25, 1901, he was free to devise it, or if he did not devise it, "it descended to his heirs free from such limitation." This provision of the Section practically amounts to an entailment of the homestead in case there are children born subsequent to May 25, 1901, and the word is technically correct to express that meaning. In the sense of restriction it is correctly used and is not in accordance with the practice of Congress.

In the case of *Oates v. Freeman*, *supra*, cites in support of its ruling, the following cases: *Deming Investment Company v. Bruner Oil Company*, 35 Okla. 395, 130 Pac. 1157; *Young v. Chapman*, 37 Okla. 19, 130 Pac. 289; *Bilby v. Gilliland*, 41 Okla. 678; 137 Pac. 687, all cases in which the allottee died prior to the selection, and therefore not in point. *United States v. Cook*, *supra*, cites *Rentie v. McCoy*, 35 Okla. 77, 130 Pac. 244, and *Reed v. Welty*, 197 Fed. (DC) 419, in both of which cases the allottee died before selection of allotment.

§ 135. **Homestead—Minor Children Born Subsequent to May 25, 1901.**—By Section 16, Supplemental Agreement, it is provided "the homestead of each citizen shall remain,

after the death of the allottee, for the use and support of children born to him after May 25, 1901." The date of May 25, 1901, was fixed for the reason that at the time of the adoption of this agreement, children born subsequent to that time were not to share in the allotment of land, and it was intended for the use and support of children who would have no allotment for themselves. The subsequent Acts extending the rolls so as to include children born up to March 4, 1906, did not change the provision of the Supplemental Agreement. The consequence was that children born subsequent to May 25, 1901, and prior to March 4, 1906, in addition to having allotments of their own, were also granted the use and support of the homesteads of their parents after the death of the latter. The question that arises is as to the title such children take in the land of their deceased ancestors. There is no limitation upon the time within which they shall enjoy the use of such homestead. This grant apparently vests a life estate in the children born subsequent to May 25, 1901, with the remainder to the heirs of such allottee in which such children would undoubtedly share with heirs born prior to May 25, 1901. The use and support mentioned in such section means the use for agricultural purposes, or any other use that does not involve the alienation of the corporeal or incorporeal hereditaments.*

In the absence of restriction upon alienation, such life estate in the children born subsequent to May 25, 1901, would undoubtedly be subject to conveyance. It was, however, apparently the legislative intent that such estates should remain in trust for the use and support of such children during their lifetime, which will probably be construed as inconsistent with alienation. The status in regard to alienation, of the remainder, subject to the life estate in the children born subsequent to May 25, 1901, is a difficult question. If it should be held that the five an-

* *Riley v. Kelsey*, 218 Fed. (DC) 391.

one year term of restriction applied to the homestead in the heirs as well as the allottee, and were unaffected by the latter part of Section 16, it would undoubtedly have the same status as the entire estate in the homestead. On the other hand, if it shall be determined that the homestead was subject to alienation by the heirs, by reason of the homestead not vesting a life estate in the heirs born subsequent to August 25, 1901, then its status is different. It is clear that the provision "but if he have no such issue, . . . the homestead embraced in his homestead shall descend to his heirs free from such limitation," the homestead would be subject to the heirs by both the five and twenty-one year restrictions. But this provision applied only in case there was no such issue. When there was such issue, the homestead was restricted in the heirs under both.

Homestead—Alienation By Devisee.—Under Section 16 of the Supplemental Agreement, the homestead of the settlor who left no issue surviving, born subsequent to August 25, 1901, was subject to devise by will. It has been held that the devisee, under such will, took the homestead free from restrictions upon its alienation.⁹

Surplus Allotments.—As to the surplus allotments to minor and adult allottees who made their selection at death, there can be no question that the restrictions provided in the first part of Section 16 applied to both the allottees and their heirs, and that such surplus allotments remained restricted in the hands of the heirs for five years from the day of August, 1902. It is equally clear that the heirs of such allottees could convey title thereafter, whether such heirs were minors or adults, unless affected by the provisions of April 26, 1906, and May 27, 1908.¹⁰

⁹ *States v. Fooshee*, 225 Fed. (CCA) 521.

¹⁰ *Western Investment Co.*, 221 U. S. 286, 55 L. Ed. 738; *Freeman*, 157 Pac. 74.



§ 139

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§ 138. **Surplus—Act of April 21, 1904.**—The Act April 21, 1904, is as follows:

“And all the restrictions upon the alienation of land all allottees of either of the Five Civilized Tribes of Ind who are not of Indian blood, except minors, are, except homesteads, hereby removed and all restrictions to the alienation of all other allottees of said tribes, except minors and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under rules and regulations as the Secretary of the Interior prescribe. . . .”

It will be noted that the Act does not relieve the disabilities of the allottee, but removes the restrictions to the land itself. The Act applies to the land and not to allottee.¹¹

The surplus lands mentioned in the Act, to wit: those adult allottees not of Indian blood, upon the passage of above act, were unrestricted in the allottees, and, at their death, thereafter descended unrestricted to their heirs.¹²

§ 139. **Minors.**—Minors were specifically excepted from the provisions of the Act, but it seems clear that the surplus land of an allottee who was a minor at the time of passage was alienable upon the minor's attaining his majority thereafter; and that upon his death, after attaining his majority, the land descended unrestricted to his heirs.

It has also been held, in *Roberts v. Casner*, 152 Pac. 409, that upon the death of a minor after the passage of the Act, his surplus allotment descended to his heirs unrestricted, provided the heirs were adults. The decision

¹¹ *United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409.

¹² *Parkinson v. Skelton*, 33 Okla. 813, 128 Pac. 131; *United States v. Jacobs*, 195 Fed. (CCA) 707; *Bradley v. Goddard*, 45 Okla. 77, 145 Pac. 409; *Iowa Land & Trust Co. v. Dawson*, 37 Okla. 593, 134 Pac. 409.

¹³ *United States v. Shock*, 187 Fed. (CC) 862, 870.

the proposition that after the death of the tee, the land no longer belongs to a minor, but and if the heirs are adults, the exception to the ot apply, and the land is unrestricted. If the to the land and not to the allottee, it is difficult that conclusion can be reached. It is true that ath of the minor the land no longer belongs to but it was still the *allotment* of a minor, and was by the allottee or his heirs until August 7, 1907, on 16 of the Supplemental Agreement, unless ere removed by the Act of April 21, 1904, above but that Act removed restrictions only upon the lt allottees, not of Indian blood, and as the land land of an adult, it was unaffected by the act and lienable under Section 16, *supra*. By the Act of restrictions does not depend upon the age or ood of the heir, but of the allottee. If the allot- thin the provisions of the act, the land was unre- l if he died thereafter, it was unrestricted in his lless of their age or degree of blood. As said by e Court of Oklahoma, in *Parkinson v. Skelton*:

rd 'allottees' as used in the Act of April 21, to the parties to whom allotments were made their heirs, and when the allottee, under the ould have been authorized to alienate his land d, the same, on his death, was alienable by his it reference to their blood.''¹⁴

e holding in *Parkinson v. Skelton*, *supra*, and ve, 151 Pac. 885, the Act also would render, free tions by the heir, the surplus allotment of a ee who died before attaining his majority, and passage of the above Act, after he would have age, if he had lived. And the same course of ould arrive at the same result in the case of a

n v. Skelton, 33 Okla. 813, 128 Pac. 131; *Bradley v. Okla.* 77, 145 Pac. 409.



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minor who died after the passage of the Act, in view of the holding in *United States v. Shock*, 187 Fed. (CC) 100, to the effect that a minor, upon attaining his majority on April 21, 1904, was free to convey his surplus land.

§ 140. **Status of Inherited Land Prior to April 26, 1901.**—At the time of the passage of the Act of April 26, 1901, the status of the inherited lands of the Creek Nation, with reference to alienation was as follows:

The lands, both surplus and homesteads of members who died before receiving allotment, were subject to unrestricted alienation by the heirs, whether adult or minor.

Homestead allotments of members who died after receiving allotment, leaving no children born subsequent to May 25, 1901, were alienable by the heirs upon the death of the allottee, or restricted for five years from August 8, 1902, or twenty-one years from date of patent, according to the constitution that shall be finally adopted.

The estate for life of such children in the homestead of a member who died subsequent to allotment, leaving no children born subsequent to May 25, 1901, was probably inalienable. The remainder subject to such life estate was probably restricted for twenty-one years from date of patent.

The surplus allotments of all members who died subsequent to allotment were inalienable by the heirs until August 7, 1907; thereafter, alienable by the heirs, whether adult or minor.

The surplus allotments of adult allottees not of Indian blood, who died after April 21, 1904, were alienable by their heirs.

CHAPTER XVIII.

SEMINOLE—SOURCE AND NATURE OF SEMINOLE TITLE.

- 41. Allotment Acts and Treaties.
- 42. Persons Participating in Allotment.
- 43. Freedmen.
- 44. Title of Seminoles.

§ 141. **Allotment Acts and Treaties.**—The first agreement with any of the Five Civilized Tribes to be adopted by the United States and the tribe was with the Seminoles. The agreement known as the Original Seminole Agreement was ratified by the tribe on December 16, 1897, and adopted by the Act of Congress, approved July 1, 1898. A Supplemental Agreement was afterwards adopted by the tribe on the 7th day of October, 1899, and ratified by Congress by the Act approved June 2, 1900.

By Act of March 3, 1903, the restrictions upon alienation, applicable to the homestead, were changed and it was provided that the tribal government should not continue longer than March 4, 1906. These were the acts and treaties under which the lands of the Seminoles were allotted in severalty to the members of the tribe and the restrictions upon alienation imposed. The rolls of the tribe were completed and approved by the Secretary of the Interior April 2, 1901. On June 1, 1901, the Commission opened an office for allotment at Wewoka and the allotment was completed on June 28, 1902.

§ 142. **Persons Participating in Allotment.**—The Seminoles were a nation of full-bloods. Intermarriage with a member of the tribe did not bestow citizenship, as among the Choctaws and Chickasaws. There were only three

classes of citizens entitled to enrollment, citizens by blood, citizens by adoption, and freedmen. No separate rolls were made of adopted citizens. They were included in the roll of citizens by blood. The membership was thus classified by the Commission in its final rolls: "Seminoles by Blood," "Seminole Freedmen," "Seminoles by Blood, minor children" (Act March 3, 1905). "Seminole Freedmen." (Act of Congress March 3, 1905.)

Unlike the case in the agreements with the other tribes, the Oringal Seminole Agreement contained no provision by which its membership was to be determined. By Section 1 of the Supplemental Agreement it was enacted:

"First—That the Commission to the Five Civilized Tribes in making the rolls of Seminole citizens, pursuant to the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizens then living; and the rolls so made, when approved by the Secretary of the Interior, as provided by said Act of Congress, shall constitute the final rolls of Seminole citizens, upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons."

By Act of March 3, 1905, the Secretary was directed to enroll "Indian children born prior to March 4, 1905, and living on said later date, to citizens of the Seminole Nation whose enrollment has been approved by the Secretary of the Interior; and to enroll and make allotments to such children, giving to each an equal number of acres of land.

§ 143. **Freedmen.**—The Seminoles were, prior to the Civil War, a slaveholding people and during that struggle threw in their lot with the Southern Confederacy. After the war, a peace was concluded between the United States and the Seminoles in the City of Washington on March 1

66, which was ratified by Congress on the 19th day of July, and proclaimed on the 16th day of August, 1866.

Section 2 is as follows:

‘The Seminole Nation covenants that henceforth in said nation slavery shall not exist, nor involuntary servitude, except for and in punishment of crime, whereof the offending party shall first have been duly convicted in accordance with law, applicable to all the members of said nation. And as much as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil rights, it is stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color, who may be adopted as citizens or members of said nation.’

By such provision and treaty, the former slaves, “and such others of the same race, as shall be permitted by said nation to settle there” became an integral part of the Seminole Nation with all the rights of native Seminoles. They were enrolled by the Commission and allotments made to them which were subject to the same conditions and restrictions that pertained to the allotment of members of Indian blood.¹

144. Title of the Seminole.—The Seminoles were an offshoot of the Creek Tribe who migrated into Florida. They were at first called lower Creeks, but became known as Seminoles about 1775. By treaty concluded at Fort Moultrie, September 18, 1823, the Seminoles ceded most of their lands to the United States and were confirmed in their possession of the rest. On the 9th day of May, 1832,

¹Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; Godfrey v. Land & Trust Co., 21 Okla. 293, 95 Pac. 792; Kappler's Laws and Treaties, Vol. 2, page 910.

a treaty was concluded between the Seminoles and the United States known as the treaty of Paynes Landing. By its terms the Seminoles were to send agents into the country west of the Mississippi, the granting of which by the United States to the Creek Nation was under consideration, for the purpose of determining whether they would receive a part of the lands of the Creeks and remove into their country. Upon a favorable report by such agents the treaty was to be binding upon both parties. The Indians agreed to cede to the United States their lands in Florida and to receive lands among the Creeks and to become "a constitutional part of the Creek Nation," with whom they were to be reunited. In the treaty between the United States and the Creeks of February 14, 1833, provision was made for the Seminoles in accordance with the above agreement. Upon a favorable report of the Seminole agents, a treaty was concluded between the United States and the Seminole Indians at Fort Gibson on March 28, 1823, confirming and ratifying the treaty of Paynes Landing. A large part of the Seminoles resisted emigration, and the efforts of the United States to remove them by force brought on the Second Seminole War which was waged for several years. The removal of the Seminoles to the Creek country was, however, finally effected.

In order to allay the dissention between the Creeks and Seminoles in the Indian Territory, the treaty of August 7, 1856, was concluded between the United States and these Tribes of Indians. By such treaty the Creeks conveyed to the Seminoles for their exclusive use and enjoyment a part of their domain. By treaty of March 21, 1866, the Seminoles ceded to the United States for a stipulated price, all the lands they had received from the Creeks under the treaty of August 7, 1856, and the United States, having obtained from the Creeks the westerly part of their lands, granted to the Seminoles a tract of two hundred thousand acres "which shall constitute the national domain of the *Seminole Nation*." Subsequently by the Acts of March 3,

and August 5, 1882, the United States purchased for Seminoles an additional tract on the east consisting of 100 acres.

In the original Seminole Agreement it was provided:

When the tribal government shall cease to exist the tribal chief last elected by said tribe shall execute, under the hand and the seal of the nation, and deliver to each allottee a deed conveying to him all the right, title, and interest of the said nation and the members thereof in and to the lands so allotted to him, and the Secretary of the Interior shall approve such deed, and the same shall thereupon operate as relinquishment of the right, title, and interest of the United States in and to the land embraced in the conveyance, and as a guaranty by the United States of the title of said lands to the allottee; and the acceptance of such deed by the allottee shall be a relinquishment of all right, title, and interest in all other lands belonging to the allottee except such as may have been excepted from allotment and held in common for other purposes."

The allotment of the lands of the tribe in severalty to the allottee succeeded to all the right, title and interest of the tribe and of the United States in the land selected as the allotment and was seised of a fee simple title, which in the absence of restrictions upon alienation would support any manner of sale, conveyance or incumbrance.

CHAPTER XIX.

SEMINOLE—ALLOTMENT.

- § 145. Homestead—Surplus.
- 146. Allotment Certificate.
- 147. Legal Effect of Allotment Certificate.
- 148. Patent.

§ 145. **Homestead—Surplus.**—By Section 1 of the Original Agreement, the lands of the Seminoles were graded for the purpose of allotment, into three classes, designated as first, second and third. There was allotted to each member of the tribe land equal in value to sixty acres of the first class, 120 acres of the second class, and 240 acres of the third class. It was further provided in said agreement "Each allottee shall designate one tract of forty acres which shall, by the terms of the deed, be made inalienable and non-taxable as a homestead in perpetuity." The forty acres thus made inalienable in perpetuity was designated as a homestead, but no name was assigned to the balance of the allotment to distinguish it from the homestead. The part of the allotment, exclusive of the homestead, has generally been designated as the "surplus," and the two designations "homestead" and "surplus," not only in the case of the Seminoles but in the case of the other Five Civilized Tribes, has acquired a clearly defined meaning. A separate patent was issued for the homestead and surplus and the term and condition of restriction were different.

§ 146. **Allotment Certificate.**—The rules and regulations of the Commission provided for the issuance of allotment certificates to the allottee evidencing the selection of the land described therein as the allotment of such member. Provision was made for contest and the issuance of the certificate was withheld during the time allowed for

ing of contests and pending their determination. This departmental regulation was a recognized part of the machinery of allotment in all the Five Civilized Tribes. Section 1 of the Original Agreement made provision for the issuance of such certificates. It provided "Such allotment shall be made under the direction and supervision of the Commission to the Five Civilized Tribes, in connection with representative appointed by the tribal government; and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him."

§ 147. **Legal Effect of Allotment Certificate.**—It is well settled that the allotment certificate when issued, like a patent, is dual in its effect. It is the evidence of an adjudication by the special tribunal empowered to decide the questions that the party to whom it is issued is entitled to the land and it is a conveyance of the right of this title to the allottee.¹

An allotment certificate, however, is only evidence of the right of the holder to the selection and allotment of the land therein described; it bestows no right of itself. Upon the formal selection, in accordance with the rules of the Commission, and at the expiration of the period within which a contest might be filed, the right of allotment became absolute, the allottee having done all that the law required to entitle him to the land selected as his allotment. The duty of executing and issuing allotment certificates and patents where the right thereto had matured, was ministerial and could be enforced by mandamus.²

Upon the selection of an allotment by a member of the tribe in accordance with the rules of the Commission the

¹ Wallace v. Adams, 143 Fed. (CCA) 716; Frame v. Bivens, 189 Md. (CC) 785; Bowen v. Carter, 42 Okla. 565, 144 Pac. 170.

² Ballinger v. Frost, 216 U. S. 240, 54 L. Ed. 464; United States v. Bitmire, 236 Fed. (CCA) 474; United States v. Dowden, 220 Fed. (CCA) 277; Thomason v. Wellman & Rhoades, 206 Fed. (CCA) 5; White v. Starbuck, 41 Okla. 50, 133 Pac. 223.

allottee became vested with the equitable title to the land so selected, which in the absence of restrictions upon its alienation would support a conveyance. The allotment certificate is evidence of such equitable right.³

§ 148. **Patent.**—The delivery of patent conveyed the legal title, which when issued, related back to the inception of the title and operated in favor of the legal assignee of the equitable title of the allottee. The issuance of patents in the Seminole Nation, by express provision which was peculiar to that nation, terminated the restricted period upon the surplus allotments. By reason of the uncertainty of the Secretary of the Interior in the construction of the Seminole provisions, no patents were issued until after the decision by the Supreme Court of the United States of the case of *Goat v. United States*, which was decided on September 29, 1912.

³ *Mullen v. United States*, 224 U. S. 448, 56 L. Ed. 834; *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Gritts v. Fisher*, 224 U. S. 640, 56 L. Ed. 928; *United States v. Dowden*, 220 Fed. (CCA) 277; *Ballinger v. Frost*, 216 U. S. 240, 54 L. Ed. 464.

CHAPTER XX.

SEMINOLE—RESTRICTIONS ON ALIENATION— ALLOTTED LAND.

- 149. Scope of Subject.
- 150. Homestead.
- 151. Surplus.
- 152. Act of April 21, 1904.
- 153. Minors.
- 154. Act of April 26, 1906.
- 155. Status of Allotted Land Prior to Act of May 27, 1908.

§ 149. **Scope of Subject.**—The consideration of the question of restrictions upon alienation of the lands of the Seminoles presents two aspects; first, restrictions upon the land in the hands of the allottee; second, restrictions upon the land in the hands of his heirs or devisees. The first question will be treated under the head of "allotted land," the second under the head of "inherited land."

§ 150. **Homestead.**—The original Seminole agreement provided:

"Each allottee shall designate one tract of forty acres, which shall by the terms of the deed, be made inalienable and non-taxable as a homestead in perpetuity."

By Act of March 3, 1903, however, this restriction was changed by Congress. It was then provided:

"Provided, further, that the homestead referred to in said act shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment. A separate deed shall be issued for said homestead, and during the time the same is held by the allottee it shall not be liable for any debt contracted by the owner thereof."

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Any attempted alienation or incumbrance of said homestead by the allottee was absolutely void.¹

§ 151. **Surplus.**—The language of the Original Agreement imposing restrictions upon alienation applicable to the surplus is as follows:

“All contracts for sale, disposition, or incumbrance of any part of any allotment made prior to date of patent shall be void.”

This language is broad enough to include the homestead, but inasmuch as the provision applicable to the homestead alone, is much broader and the term of restriction greater, it is immaterial. The Original Agreement also provided that:

“When the tribal government shall cease to exist the principal chief last elected by said tribe shall execute under his hand and the seal of the nation and deliver to each allottee a deed, etc.”

It is apparent that it was the understanding of the Seminoles from the two provisions that the issuance of patents, which act was to terminate the period of restrictions upon the surplus, was to occur “when the tribal government shall cease to exist.” By Act of Congress of March 3, 1903, it was enacted that the tribal government of the Seminoles was not to continue longer than March 4, 1906. On March 2, 1906, however, Congress by joint resolution, provided for the continuance of “the tribal existence and present tribal governments” of the Five Civilized Tribes “in full force and effect for all purposes under existing laws,” until all the property of the tribe should be distributed. And by Act of April 26, 1906, such tribal governments were continued “until otherwise provided by law.” It has been definitely settled that Congress had authority to

¹ *Goat v. United States*, 224 U. S. 458, 56 L. Ed. 841; *Deming Investment Co. v. United State*, 224 U. S. 471. 56 L. Ed. 847; *Stout v. Simpson*, 124 Pac. 754.

change the date of the expiration of the tribal governments and that the restricted period did not terminate upon March 4, 1906, but upon issuance and delivery of patent.²

No patents were issued by the Commission to lands in the Seminole Nation until after April 29, 1912.³

It therefore follows that no surplus allotments of allottees in that nation, except such as were affected by the acts of April 21, 1904, and May 27, 1908, were subject to alienation prior to April 29, 1912. The date of the execution and delivery of patent therefor, would control the alienability of the land in each case.

§ 152. **Act of April 21, 1904.**—On April 21, 1904, Congress enacted as follows:

“And all the restrictions upon the alienation of lands of allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors are except as to homesteads, hereby removed, etc.”

Upon selection of allotment the allottee was vested with an equitable title, which, had there been no restrictions upon his right of alienation, would have supported a conveyance prior to issuance of patent. The condition that the land should not be alienated prior to delivery of patent was a restriction which was removed by the above Act, and therefore, all adult allottees of the Seminole Nation who were not of Indian blood, were authorized to convey the fee or any lesser interest in their surplus land free from restrictions of any kind, notwithstanding no patents had been issued therefor. Freedmen allottees of the tribe were “allottees not of Indian blood” upon whose right of alienation of their surplus allotments all restrictions were removed by said Act.⁴

²Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; Scott v. Emby, 155 Pac. 1154.

³Scott v. Quimby, 155 Pac. 1154.

⁴Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; Deming Investment Co. v. United States, 224 U. S. 471, 56 L. Ed. 847; Godoy v. Iowa Land & Trust Co., 21 Okla. 293, 95 Pac. 792.



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§ 153. **Minors.**—The Act specifically excepted mi from its operation. They were excepted wholly on acc of their minority. It was by reason of their being inex enced that Congress excepted them from the provi permitting alienation that applied to adult member their class. Upon their attaining their majority, after passage of said Act, the reason for their exclusion wa moved. It has, therefore, been held that the restric were removed by said Act upon the surplus allotmen non-Indian members who were minors at the time o passage upon their attaining their majority thereafter

§ 154. **Act of April 26, 1906.**—The Act of April 21, removed restrictions upon adult members of non-Ind blood insofar as their surplus allotments were conce It did not effect the alienation of the lands of allottees were of Indian blood. No other Acts of Congress re ing restrictions upon allotted land were passed until Act of May 27, 1908. The Act of April 26, 1906, exte the restricted period as to full bloods upon both su and homestead lands. Part of Section 19 of that Act follows:

“No full-blood Indian of the Choctaw, Chick Cherokee, Creek or Seminole Tribes shall have pow alienate, sell, dispose of, or incumber in any manner of the lands allotted to him for a period of twenty years from and after the passage and approval of this unless such restrictions shall prior to the expiratio said period be removed by Act of Congress.”

§ 155. **Status of Allotted Land Prior to Act of Ma 1908.**—The status of allotted lands of the Seminoles to the taking effect of the Act of May 27, 1908, in rega

⁵ United States v. Shock, 187 Fed. (CC) 862, 870; Charl Thornburg, 44 Okla. 380, 141 Pac. 1033; Smith v. Bell, 44 Okla 144 Pac. 1058.



SEMINOLE.

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on, except alienation by will, may be summarized
ws: Both the surplus and homestead allotments of
s of Indian blood were inalienable.

surplus allotments of adult members not of Indian
ere alienable after April 21, 1904.

surplus allotments of members not of Indian blood
ere minors upon the 21st day of April, 1904, were
le thereafter upon their attaining their majority.

CHAPTER XXI.

SEMINOLE—RESTRICTIONS ON ALIENATION— INHERITED LAND.

- § 156. Lands of Members Who Died Prior to Selection.
- 157. Homestead.
- 158. Surplus.

§ 156. **Lands of Members Who Died Prior to Selection.**—In order to fix the date upon which those members of the Tribe living should be entitled to allotment, Section 1 of the Supplemental Agreement provided for allotment to all citizens of the Nation living upon the 31st day of December, 1899. Evidently anticipating that in some instances those living on that date might die before they were selected and secured the allotments to which they were entitled, Section 2 of the Supplemental Agreement provided that if any member should die after that time "the land, money and other property to which he would be entitled while living, shall descend to his heirs, etc."

Both the Creek, Cherokee and Choctaw-Chickasaw agreements contained practically identical sections. It has been definitely settled by the Supreme Court of the United States under the above mentioned agreements, that the restrictions upon alienation applicable to the lands of members who made their selection prior to their death did not apply to cases where the members died before selection and that such land immediately passed to their heirs free from restrictions of any kind. The same construction has been given by the State Supreme Court in the case of the Seminoles and there is no reason apparent why the same rule should not be followed by the Supreme Court of the United States.¹

¹ Smith v. Sumpsey & Rosie, 166 Pac. 1094.

§ 157. **Homestead.**—The restriction applicable to the homestead by Act of March 3, 1903, is as follows:

“Provided further that the homestead referred to in said Act shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment.”

This provision is almost identical with Section 12 of the Choctaw-Chickasaw Supplemental Agreement, and it has been held by the Supreme Court of the United States that the restriction was personal to the allottee and expired upon his death, so that the land was immediately alienable by the heir. A like construction has been given to the Seminole Agreement by the Supreme Court of Oklahoma.²

§ 158. **Surplus.**—It has been held that the provision of the Seminole Agreement applicable to the surplus allotment ran with the land and operated as a restriction upon the sale thereof prior to issuance of patent whether in the hands of the allottee or his heirs.³

² *Lula, Seminole Roll No. 908 v. Powell*, 166 Pac. 1050; *Smith v. Sumpsey & Rosie*, 166 Pac. 1094; *Stout v. Simpson*, 34 Okla. 129, 134 Pac. 754.

³ *Smith v. Sumpsey & Rosie*, 166 Pac. 1094; *Lula, Seminole Roll No. 908 v. Powell*, 166 Pac. 1050.

CHAPTER XXII.

REMOVAL OF RESTRICTIONS—GENERAL STATEMENT.

- § 159. Reason for Imposing Restrictions.
- 160. Reasons for Removal of Restrictions—Allotted Lands.
- 161. Reasons for Removal of Restrictions—Inherited Lands.
- 162. Acts Removing Restrictions.

§ 159. Reason for Imposing Restrictions.—The allotment in severalty of the lands of the Five Civilized Tribes was predicated upon the assumption that the aliquot part of the lands of each Tribe received by every member thereof, as his allotment, would be sufficient to maintain him in the essential comforts of life and to protect him against penury and want. And Congress fully realized that the Indians, being still in the tribal state of development, which community as opposed to private ownership of property, is characteristic, if placed suddenly upon an equality with the whites upon the basis of the white man's civilization, would be unable to protect themselves against the superior endowments of their white neighbors; and that unless steps were taken to prevent it, the land hunger and commercial instincts of the whites, and the improvidence and inexperience of the Indians, would inevitably result in the former obtaining the land of the latter and leaving them without means of self-support and a charge upon the community. It was in order to meet this clearly foreseen danger that restrictions upon the right of alienation of the lands of allottees of the several Tribes were imposed. While the restricted period varied in the different Tribes, and with respect to the homestead and surplus parts of the allotment in the same Tribe, the attempt to protect the all-

n the enjoyment of their lands until, by experience in white man's ways, it was hoped they might learn to et themselves, is apparent in the legislation applying em all.

e very reason of the restriction was the assumption of ne competency of the Indian allottees, inherent in the n blood on account of the habits of thought and red development of those people. But each of the Five ized Tribes embraced many people not of Indian blood their memberships represented every degree of amalation with such foreign elements. Upon the one exere were the full-bloods who, in most instances, were unto speak or understand the language in which the ies were written. Upon the other hand, were the s who had become members of the Tribe by interiage or adoption, and the freedmen, former slaves, who been admitted to membership under compulsion; er of whom had a trace of Indian blood. Between extremes, were persons of every degree of Indian , the result of a crossing between the Indian and nonn population. It is thus obvious that the considera- hat induced Congress to prohibit the alienation of the operated most strongly in the case of full bloods, and the mixed bloods, decreased in proportion as the blood e member partook less of the Indian and more of the ndian. With the whites and freedmen, having no Inblood, the reason for the restriction disappeared en. In the imposition of restrictions under the original es, however, no distinction was made between full s and the whites and freedmen. They applied equally to whom allotments were made. In the course of time, ome of the allottees died and their lands descended to heirs. These inherited lands were, in some instances, et to restriction in the hands of the heirs, and in other ces were not. But these heirs were themselves, exthose born subsequent to the closing of the rolls for provision was made, recipients of allotments, ade-

quate in the judgment of Congress, for their use and support. Consequently there was no vital necessity for preventing the alienation of such inherited lands.

§ 160. **Reasons for Removal of Restrictions—Allotted Land.**—There were then two classes of lands in respect of which Congress came to the conclusion that restriction upon alienation was unnecessary; allotted land of non-Indian, slight Indian blood, and inherited lands. But, as has been shown, the considerations that induced Congress to remove restrictions upon the two classes of lands were dissimilar and this distinction is clearly reflected in such legislation. In the case of allotted lands, it was the judgment of Congress that allottees of non-Indian or slight-Indian blood were capable of managing their affairs without the superintending care of the government, and as to them restrictions were unnecessary. Removal of restrictions upon the allotted lands, therefore, was based upon the quantum of Indian blood. As a consequence of the legislative assumption of the competency of the allottees of the degrees of blood designated, all restrictions of whatever nature were removed as to the lands affected. And no regulation of any kind was imposed, as in the case of conveyances by full blood heirs, designed to prevent sales upon inadequate considerations. The restrictions themselves having been removed upon the assumption of the competency of those affected by the legislation, such guardianship would have been both unnecessary and inconsistent.

§ 161. **Reasons for Removal of Restrictions—Inherited Land.**—In the case of the owners of inherited lands, however, no such presumption was entertained. No delusions were indulged that the heirs upon the removal of restrictions would not sell their inherited lands. The experience with those heirs who had received their inheritances unaffected by restrictions was conclusive upon this point. The consideration which in the judgment of Congress justified

removal of restrictions upon the inherited lands, was the fact that the heirs, except those born subsequent to the issuing of the rolls, were the owners of allotments adequate to their needs. The removal of restrictions, therefore, upon inherited lands, was not based upon quantum of Indian blood of the heir. It was effective as to all heirs without regard to Indian blood. While the heirs were not encouraged to alienate their inherited lands, the restrictions were removed with the full knowledge that in a vast majority of cases they would do so. Such safe-guards as were thrown about conveyances by the heirs, in case of full bloods, were not intended to discourage or hinder sales but to prevent the lands from being sacrificed for inadequate considerations.

§ 162. **Acts Removing Restrictions.**—And it is worthy notice that whereas restrictions were imposed upon the lands of each Tribe by treaty and special legislation applicable only to the members of the Tribe, they were removed by general legislation applicable to the designated classes of all of the Five Civilized Tribes. Restrictions were removed upon allotted lands by the Acts of April 21, 1904 and May 27, 1908, and upon inherited lands by the Acts of April 21, 1906 and May 27, 1908. The Act of April 21, 1904 has been discussed in connection with each Tribe.

CHAPTER XXIII.

REMOVAL OF RESTRICTIONS—INHERITED LA

ACT OF APRIL 26, 1906.

- § 163. Section 19 Does Not Apply to Inherited Lands.**
- 164. Section 22 of Act of April 26, 1906.**
- 165. Adult Heirs Less Than Full Blood.**
- 166. Minor Heirs Less Than Full Blood.**
- 167. Act Prescribes Its Own Procedure.**
- 168. Proper Indian Territory Probate Court.**
- 169. Proper County Court After Admission of State.**
- 170. Full Bloods—Adult.**
- 171. Full Blood Minor Heirs.**

ACT OF MAY 27, 1908.

- 172. When Section 9 Became Effective.**
- 173. Effect Upon Section 22 of the Act of April 26, 1906.**
- 174. Adult Heirs Less Than Full Blood.**
- 175. Homestead of Allottee of One-half or More Indian Leaving Issue Born Since March 4, 1906.**
- 176. Minor Heirs Less Than Full Blood.**
- 177. Full Blood Heirs.**
- 178. What Court to Approve Sale.**
- 179. Date of Conveyance and Not Death of Allottee Determine by Whom Conveyances Shall be Approved.**
- 180. Proper County Court for Approval of Conveyance.**
- 181. Not Necessary That Administration Proceedings be Pending.**
- 182. Act of Court in Approving Deed is Administrative and Not Judicial.**
- 183. No Especial Procedure Necessary.**
- 184. Payment of Consideration at Time of Approval Unnecessary.**

ACT OF APRIL 26, 1906.

- § 163. Section 19 Does Not Apply to Inherited Lands.—Section 19 of the Act of April 26, 1906 is as follows**

“That no full blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes shall have pov

, sell, dispose of, or encumber in any manner any lands allotted to him for a period of 25 years from the passage and approval of this act, unless such person shall, prior to the expiration of said period, be authorized by act of Congress."

to the enactment of Section 5 of the Act of April 22, 1906, lands of members who had died prior to selection, were then allotted by the Commission and patents issued to their heirs. In a sense, land so patented to the heir might be considered as "allotted" to him within the meaning of Section 19 above quoted, and therefore, in the case of full allotment, inalienable for a period of 25 years after the passage of said Act. It seems clear, however, that such section applies only to the lands which were allotted to members as their aliquot part of the lands of the Tribe; and does not apply to allotted lands and not inherited lands.¹

Section 22 of Act of April 26, 1906.—Section 22 of the Act of April 26, 1906 is as follows:

That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs, may sell and convey the lands inherited from the decedent; and if there be both adult and minor heirs of the decedent, then such minors may join in a sale of such lands with a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the death of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

¹ *U. S. v. Bell*, 250 Fed. (CCA) 209; *Youngken v. David*, 235 Fed. (CCA) 621; *Sunday v. Mallory*, 237 Fed. (CCA) 526; *Shulthis v. U. S.*, 170 Fed. (CCA) 529; *Chupco v. Chapman*, 170 Pac. 259.

§ 165. **Adult Heirs Less Than Full Blood.**—As to adult heirs less than full blood, the act is plain and unmistakable, "that the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the Tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent." The qualifications following the above provisions do not apply to them. The act affects an absolute removal of all restrictions of whatever nature that had theretofore attached to it in the hands of such heirs. They were authorized thereafter to convey the fee or any lesser interest in their inherited lands.²

§ 166. **Minor Heirs Less Than Full Blood.**—In the case of minor heirs the situation is different. Restrictions were not removed generally as to minor heirs by said section. It provided: "And if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian, etc."

The right of a minor under said section to convey his interest in his inherited lands was made to depend upon the existence of adult heirs. If there were both adult and minor heirs, the minor heirs were authorized to join in a conveyance with the adult heirs; if there were no adult heirs, the minor heirs were not permitted to alienate.³

The minor heirs, however, even where there were also adult heirs, were not authorized to make a sale of their in-

² United States v. Black, 247 Fed. (CCA) 942; Wilson v. Morton, 29 Okla. 745, 119 Pac. 213; Stout v. Simpson, 34 Okla. 129, 124 Pac. 754; Parkinson v. Skelton, 33 Okla. 813, 128 Pac. 131; United States v. Shock, 187 Fed. (CC) 862, 870; Richards v. Parker, 24 Fed. (CCA) 330; United States v. Ferguson, 225 Fed. (CCA) 974; United States v. Ferguson, — U. S. —, 62 L. Ed. 592.

³ Wilson v. Morton, 29 Okla. 745, 119 Pac. 213; Talley v. Burgess, 46 Okla. 550, 149 Pac. 120; Lula, Seminole Roll No. 91 Powell, 166 Pac. 1050; Talley v. Burgess, — U. S. —, 62 L. 340.

alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of 25 years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress."

Prior to the enactment of Section 5 of the Act of April 26, 1906, lands of members who had died prior to selection, had been allotted by the Commission and patents issued to their heirs. In a sense, land so patented to the heir might be considered as "allotted" to him within the meaning of Section 19 above quoted, and therefore, in the case of full bloods, inalienable for a period of 25 years after the passage of said Act. It seems clear, however, that such section has application only to the lands which were allotted to the members as their aliquot part of the lands of the Tribe; that it applies to allotted lands and not inherited lands.¹

§ 164. **Section 22 of Act of April 26, 1906.**—Section 22 of the Act of April 26, 1906 is as follows:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

¹ Harris v. Bell, 250 Fed. (CCA) 209; Youngken v. David, 235 (DC) 621; Sunday v. Mallory, 237 Fed. (CCA) 526; Shulthis v. Jougat, 170 Fed. (CCA) 529; Chupco v. Chapman, 170 Pac. 259.

ever, that the sale of the minor's interest under this section was not required to be in accordance with the provisions of the Arkansas law with reference to the sale of a minor's land generally; that the act prescribed its own procedure and was not enacted with reference to the then existing Arkansas law in force in the Indian Territory. The act authorized the minor to join in a sale of his land by a guardian duly appointed by the proper United States court for the Indian Territory, and, in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors might reside or in which said real estate was situated, upon an order of such court made upon petition by the guardian. If the sale was made by order of the proper probate court of the Indian Territory prior to Statehood or of the county court thereafter, upon petition filed in said court by the guardian of the minor, the requirements of the section were complied with and the sale valid; otherwise it was void.⁶

§ 168. **Proper Indian Territory Probate Court.**—The Act prescribed that the sale must be by a guardian duly appointed by the proper United States court for the Indian Territory, and approved by such court upon petition filed by said guardian. The Indian Territory, at the time of the passage of the above act, was divided for judicial purposes into four districts, the Northern, Western, Central and Southern Districts. It has been held that the United States court for the district, either in which the minor lived or in which his land was situated, had authority to appoint a guardian for the estate of such minor. The court which had authority to appoint the guardian under said act also had authority to approve the sale. It therefore follows that a sale of a minor's interest in his inherited land m

⁶ Talley v. Burgess, — U. S. —, 62 L. Ed. 340; Wilson v. Fenton, 29 Okla. 745, 119 Pac. 213; Talley v. Burgess, 46 Okla. 550, Pac. 120; Chupco v. Chapman, 170 Pac. 259.

prior to the admission of Oklahoma into the Union, should have been approved by the court of the district either in which the minor lived or in which his land was situated.⁷

§ 169. **Proper County Court After Admission of State:**

"And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated."

By Section 20 of the Enabling Act, and Section 27 of the Schedule to the Constitution, the probate cases pending in the United States court for the Indian Territory, upon the admission of the state, were transferred to the district court of the county which included that part of the territorial jurisdiction theretofore attached to the United States court for the Indian Territory. By Section 23 of the Schedule all probate cases were authorized to be transferred by the district court, which under the Oklahoma law, exercised no probate jurisdiction to the county court which had original jurisdiction to administer estates.⁸

It therefore seems plain that the county court, upon order of transfer from the district court, was the successor of the United States court for the Indian Territory in all probate cases pending in the United States court at the time of the admission into the Union, and that it was the "proper court" for the approval of the sale by minor heirs where the guardianship proceedings were pending in the United States court prior to Statehood. After the admission of the state and prior to the passage of the Act of May 27, 1908, the guardian should have been appointed and the conveyance approved by the probate court which under the Oklahoma law at that time had probate jurisdiction of the state of the minor although Section 22 seems to authorize

⁷ *Ma-Harry v. Eatman*, 29 Okla. 46, 116 Pac. 935; *Mullen v. Glass*, 8 Okla. 549, 143 Pac. 679; *Harris v. Bell*, 250 Fed. (CCA) 209.

⁸ *Scott v. McGirth*, 41 Okla. 520, 139 Pac. 519.



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the appointment of a guardian and approval of sale by probate court of the county in which said minor resided in which said real estate was situated.⁹

§ 170. **Full Blood Heirs—Adult.**—The proviso of Sec 22 is as follows:

“All conveyances made under this provision by heirs are full blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.”

At the time of the passage of the Act, inherited lands had, in certain cases, vested in the heirs of the allottee, without restrictions upon their power of alienation. If the requirement of the approval of conveyances of full blood Indian heirs by the Secretary of the Interior, applicable to conveyances of inherited lands which were theretofore restricted, it is clear that, as to such full blood heirs the effect of the act was to re-impose restrictions. Whether such provision was intended to apply to all conveyances of full blood heirs thereafter, or only to conveyances by full blood heirs upon whose right to alienate their inherited lands restrictions were removed by the act, was a mooted question upon which the state and federal governments were at variance. It is now definitely settled, however, that all conveyances of their inherited lands by full blood Indians executed after the passage of the Act were required to be approved by the Secretary of the Interior, or by the Circuit Judge under the Act of May 27, 1908, regardless of whether such lands were restricted or unrestricted before its passage, and that without such approval, the conveyances are void.¹⁰

⁹ Ma-Harry v. Eatman, 29 Okla. 46, 116 Pac. 935; Harris v. 250 Fed. (CCA) 209.

¹⁰ Brader v. James, — U. S. —, 62 L. Ed. 335; Brader v. James, 49 Okla. 734, 154 Pac. 560; Sampson v. Staples, 151 Okla. 213; McCosar v. Chapman, 157 Pac. 1059; Bruner v. Nord, 166 Pac. 126; Cravens v. Amos, 166 Pac. 140; Moffett v. (163 Pac. 118.

And the same rule applies to conveyances by full blood heirs of inherited lands, which were allotted after the death of the allottee and were subject to unrestricted sale by heirs at the time of the passage of the Act.¹¹

171. **Full Blood Minor Heirs.**—Section 22 required that sales of the interests of minors shall be made upon an order of court, upon petition filed by guardian. The proviso thereto enacted that conveyances by heirs who were full blood Indians were to be subject to the approval of the Secretary of the Interior. A construction of the two provisions together would seem to require that the Secretary of the Interior approve conveyances of the interests of full blood heirs, even though made by a guardian upon order of the proper probate court.¹²

ACT OF MAY 27, 1908.

172. **When Section 9 Became Effective.**—The Act of May 27, 1908, affected restrictions upon the alienation of all allotted and inherited lands. Section 1 of said Act is related with reference to restrictions upon allotted land and Section 9 on inherited land. The act, so far as it established a new status in regard to alienation of allotted land, was not effective for 60 days from the date of its passage, to-wit: May 27, 1908. The legislative intent was expressed in these words:

“That from and after 60 days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows:

¹¹ *Brader v. James*, — U. S. —, 62 L. Ed. 335; *Talley v. Burns*, — U. S. —, 62 L. Ed. 340; *United States v. Holsell*, 247 U. S. (CCA) 390; *McCosar v. Chapman*, 157 Pac. 1059; *Bruner v. Erdmeyer*, 166 Pac. 126; *Sampson v. Staples*, 55 Okla. 547, 155 Pac. 213, 149 Pac. 1094; *Cravens v. Amos*, 166 Pac. 140; *Moffett v. Wiley*, 163 Pac. 118; *Sampson v. Smith*, 166 Pac. 422.

¹² *Lula v. Powell*, 166 Pac. 1050; *Boxley v. Scott*, 162 Pac. 688.



The language is restricted expressly to lands "allotted to allottees" and there is no further provision of the act which could be construed as an expression of legislative purpose to postpone the operation of the act with reference to other than allotted lands. This legislation inaugurated, so far as allotted land was concerned, a new system or plan of restriction and substituted its provisions for the provisions of the various treaties and acts of Congress upon that subject. The scope of its operation upon inherited lands, however (see *Marcy v. Board of Commissioners of Seminole County*, 144 Pac. 611), was practically confined to the removal of restrictions then existing. As an act of Congress takes effect from and after its passage and approval, unless a contrary intention is expressed, it seems safe to conclude that the act became effective as to inherited lands on May 27, 1908.¹³

Section 9 is as follows:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, that no conveyance of any interest of any full blood Indian heir in said land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee:

"Provided further, that if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in Section 1 hereof, for the use and support of such issue, during their life or lives, until April 26, 1931; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if that be not done, or in the event the issue hereinbefore provided for die before April 26, 1931, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions."

¹³ *Jefferson v. Winkler*, 26 Okla. 653, 110 Pac. 755.

§ 173. **Effect Upon Section 22 of Act of April 26, 1906.**—There can be no doubt that the Act of May 27, 1908, so far as allotted lands are concerned, repealed and superseded prior legislation and treaties establishing restrictions on alienation, and enacted a new plan of restrictions in their stead; and there are cases which seem to hold that said act had the same effect upon restrictions on inherited land.¹⁴

It has been expressly held that said act repealed that part of Section 19 of the Act of April 26, 1906, as follows:

"And every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions, be and the same is hereby, declared null."¹⁵

A comparison of the two acts, however, will disclose that the substance of Section 22 of the Act of April 26, 1906 and Section 9 of the Act of May 27, 1908, are practically identical, except that the latter act substitutes the approval of the county court, in lieu of approval by the Secretary of the Interior, of conveyances by full blood heirs, and adds a provision restricting the homestead of allottees of one-half more Indian blood leaving issue born since March 4, 1906. The only real difference between the essential enactments of Section 22 and Section 9 seems to be one of phraseology.

Section 22 provides:

"That the adult heirs of any deceased Indian of either of the Five Civilized Tribes . . . may sell and convey the lands inherited from such decedent."

The wording of Section 9 is:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land."

¹⁴ *Ehrig v. Adams*, 169 Pac. 645; *Ma-Harry v. Eatman*, 29 Okla. 46, Pac. 935; *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 56; *King Mitchell*, 171 Pac. 725.

¹⁵ *Ehrig v. Adams*, 169 Pac. 645; *Kinzer v. Davis*, 167 Pac. 753; *Rich v. Ellis*, 163 Pac. 321; *Campbell v. Daniels*, 173 Pac. 517.

It will be observed that Section 9 is broader than Section 22 in that it removes restrictions upon the alienation of inherited lands by minor heirs equally with adult heirs, whereas Section 22 permits alienation of inherited lands by minor heirs only when there were both adult and minor heirs. The effect upon Section 22 of the enactment of Section 9, so far as both provisions cover the same ground, seems to be that the latter merely continues the right of alienation under Section 22, but provides that the conveyances of full blood heirs shall be approved by the county court rather than by the Secretary of the Interior. It amends but does not repeal the former act.¹⁶

§ 174. **Adult Heirs Less Than Full Blood.**—Whether Section 9 repeals Section 22 of Act of April 26, 1906, and re-enacts its substantial provision, or merely continues it in effect, it is clear that the law theretofore existing, permitting the unrestricted sale of inherited lands by adult heirs, less than full blood, was not changed except in the case of homesteads of allottees of one-half or more Indian blood, leaving issue born since March 4, 1906. And that after the passage of the Act of May 27, 1908, as before, such adult heirs were empowered to sell and convey their inherited lands free from restrictions of any kind.¹⁷

§ 175. **Homestead of Allottee of One-Half or More Indian Blood, Leaving Issue Born Since March 4, 1906.**—The provision with reference to the homesteads of allottees of one half or more Indian blood, leaving issue born since March 4, 1906, is almost identical with the provisions of Section 16 of the Supplemental Creek Agreement except that the Secretary of the Interior may remove the restrictions imposed in the above section, whereas no such power was

¹⁶ *Brader v. James*, — U. S. —, 62 L. Ed. 335; *Bartlett v. Homa Oil Co.*, 218 Fed. (DC) 380; *United States v. Black*, 247 (CCA) 942.

¹⁷ *Bartlett v. Oklahoma Oil Co.*, 218 Fed. (DC) 380; *United S v. Shock*, 187 Fed. (CC) 862, 870.

anted to him under said Section 16. Under Section 16 o the use and support granted to the heirs designated was ring the lifetime of such heirs, and was not limited to a m of years, as in the above section. It has been held in struing Section 9 that the use and support granted to the e born since March 4, 1906, meant use for agricultural poses, or such other use as did not constitute an alien- on of the corporeal or incorporeal hereditaments.¹⁸

t has also been held in *Parker v. Riley*, 243, Fed, 42, that

Secretary of the Interior has authority to remove the triction imposed by said provision, and that such re- val operates to divest the interest of the minor heir born e March 4, 1906, who was thereafter upon the same ting as heirs born prior to that time, with respect to such erited homestead.

t has also been held, and without doubt correctly, that words at the beginning of Section 9, "that the death of r allottee of the Five Civilized Tribes *shall* operate to ove restrictions upon alienation of said allottee's land," olled to the lands of allottees who died prior, as well as sequent, to the passage of said Act.¹⁹

t is believed, however, that the proviso with reference he homestead of allottees who left issue born since March 1906, notwithstanding its very similar wording to the vision just quoted, affected the homesteads of allottees y who died after May 27, 1908. The context of the pro- o seems to leave no doubt that it was intended to have ure application only. It provides that if no such issue vive, then the allottee may dispose of his homestead by l, or, "if this be not done, . . . the land *shall* then end to the heirs, according to the laws of descent and tribution of the State of Oklahoma, free from all restric- 1." The words "shall then descend to the heirs" is very nificant. Upon the death of an allottee prior to May 27,

Riley v. Kelsey, 218 Fed. (DC) 391.

Ma-Harry v. Eatman, 29 Okla. 46, 116 Pac. 935; *Harris v. Gale*, Fed. (CC) 712.

1908, the descent was cast at the time of his death and title to the homestead, as well as the surplus, was vested in his heirs at the time of the passage of such act in accordance with the law of descent and distribution in force at that time and subject to the restriction upon alienation in effect at the time of his death. In order to make such provision applicable to the homesteads of allottees of one-half or more Indian blood, who died prior to the passage of such act leaving issue born since March 4, 1906, it would be necessary to divest the title of the heirs, which vested at the time of the death of the allottee, and to hold the descent in suspense until the occurrence of the contingencies upon which title was to vest thereunder. In addition, it would subject the vested interests of the heirs, who inherited at the time of the death of the allottee to an estate for years in favor of the issue born since March 4, 1906, which would hardly be compatible with the provisions of the Constitution of the United States against the taking of property without due process of law.

§ 176. **Minor Heirs Less Than Full Blood.**—By Section 22 of the Act of April 26, 1906, the restrictions upon the alienation of inherited lands by minor heirs were removed only where there were both adult and minor heirs of the allottee, and such minor heirs were authorized to convey only in connection with a conveyance by the adult heirs.

Section 9 abolished the distinction between minor and adult heirs in respect to the right of alienation of their inherited lands. Minor heirs, less than full blood, thereunder were authorized to alienate, free from restrictions of any kind, except that the sale must be through the proper probate court.

The passage of the Act of May 27, 1908, and not the death of the allottee, determines the question of the right of minor heirs to alienate. The minor heirs of an allottee, who died prior to May 27, 1908, could not alienate prior to the passage of that act, except in conjunction with the adult

heirs. Section 9, however, authorized such minor heirs to alienate, although the allottee died prior to the passage of that act.²⁰

§ 177. **Full Blood Heirs.**—Section 9 adds this condition to the removal of restrictions upon alienation of inherited lands by full bloods:

“Provided, that no conveyance of any interest of any full blood Indian heir in such land shall be valid, unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.”

Such proviso excepts the lands inherited by full blood heirs from the general terms of the statute making the death of an allottee operate to remove all restrictions upon the alienation of his lands. Conveyances by full blood heirs, unless approved by the court having jurisdiction of the settlement of the estate of the deceased allottee, are absolutely void and bestow no interest or estate upon the purchaser.²¹

§ 178. **What Court to Approve Sale.**—The confirmation by the probate court of the sale of the interest of a full blood heir, constitutes an approval of such sale within the meaning of such proviso, and a further order of approval is not necessary. A probate court may have jurisdiction to order and confirm the sale of the interest of a minor heir, which did not have jurisdiction of the settlement of the estate of the deceased allottee. It seems to be necessary

²⁰ *Ma-Harry v. Eatman*, 29 Okla. 46, 116 Pac. 935; *Harris v. Gale*, 23 Fed. (CC) 712.

²¹ *Brader v. James*, — U. S. —, 62 L. Ed. 335; *Talley v. Bur-*
ma, — U. S. —, 62 L. Ed. 340; *Bartlett v. Oklahoma Oil Com-*
y. 218 Fed. 380; *Sampson v. Staples*, 55 Okla. 547, 155 Pac. 213,
 Pac. 1094; *Moffett v. Conley*, 163 Pac. 118; *Cravens v. Amos*,
 75 Pac. 140; *McCosar v. Chapman*, 157 Pac. 1059; *Bruner v. Nord-*
myer, 166 Pac. 126; *Marcy v. Board of County Commissioners*, 45
 Okla. 1, 144 Pac. 611.

that the court having jurisdiction of the settlement of the estate of the deceased allottee approve the sale of the interest of a minor full blood heir, although made under authority of a probate court that had jurisdiction of the estate of the minor.²²

A different conclusion was reached, however, by the federal court.²³

This proviso is identical with the proviso to Section 22 of the Act of April 26, 1906, except that it substituted approval by the court having jurisdiction of the settlement of the estate of the deceased allottee, in lieu of approval by the Secretary of the Interior. Section 9 superceded Section 22 of the Act of April 26, 1906 in this respect and revoked the authority of the Secretary of the Interior over the approval of such conveyances. Such conveyances executed after the taking effect of Section 9, were required to be approved by the court having jurisdiction of the settlement of the estate of the deceased allottee, regardless of the date of the death of the allottee, and an approval by the Secretary of the Interior was without effect.²⁴

§ 179. Date of Conveyances and Not Death of Allottee Determines by Whom Conveyances Shall be Approved.—The date of the conveyance by the full blood heir, and not the date of the death of the allottee, determines the law under which such conveyances shall be approved. If the conveyance is executed after May 27, 1908, approval by the court is necessary to its validity regardless of whether the allottee died prior or subsequent to the passage of that Act. The Secretary of the Interior had no authority to approve conveyances made after the passage of the Act of

²² *Chupco v. Chapman*, 170 Pac. 259.

²³ *Harris v. Bell*, 250 Fed. (CCA) 209.

²⁴ *Bartlett v. Oklahoma Oil Co.*, 218 Fed. 380; *United States v. Shock*, 187 Fed. (CC) 862, 870; *Moffet v. Jones*, 169 Pac. 652; *Hop v. Foley*, 157 Pac. 727; *Sampson v. Staples*, 55 Okla. 547, 155 Pac. 213, 149 Pac. 1094; *Ma-Harry v. Eatman*, 29 Okla. 46, 116 Pac. 93.

7, 1908, although the allottee died prior to that time, the conveyance had been executed prior to the passage of the Act, approval by him would have been proper.²⁵ Although if the deed was executed and delivered to the Secretary of the Interior for his approval before the passage of the Act, his approval was valid although given after passage.²⁶

1. Proper County Court for Approval of Conveyance. Such proviso ordains that a conveyance by a full-blooded Indian heir shall be approved "by the court having jurisdiction of the settlement of the estate of said deceased." Approval by the county court designated in said proviso is essential to the validity of such conveyance, and approval by any court other than the one having jurisdiction of the settlement of the estate of the deceased allottee is invalid to make such conveyance valid.²⁷

Section 6193 of the Revised Statutes of Oklahoma, 1910, was in effect at the time of the passage of the Act of July 1, 1908, provides:

It must be proved, and letters testamentary or of administration granted:

In the county of which the decedent was a resident at the time of his death, in whatever place he may have

d. In the county in which the decedent may have owned or having estate therein, he not being a resident of the

Person v. Staples, 55 Okla. 547, 155 Pac. 213, 149 Pac. 1094; *Person v. Cornelius*, 52 Okla. 163, 152 Pac. 831; *Ma-Harry v. Eaton*, 46 Okla. 116 Pac. 935; *Harris v. Gale*, 188 Fed. (CC) 712; *Person v. Wood*, 195 Fed. (CC) 137; *United States v. Knight*, 188 Fed. (CCA) 145; *Bruner v. Nordmeyer*, 166 Pac. 126.

Person v. Bell, 250 Fed. (CCA) 209.

Person v. Okla. Oil Co., 218 Fed. (DC) 380; *United States v. Person*, 188 Fed. (CCA) 942; But see *Harris v. Bell*, 250 Fed. (CCA)

Third. In the county in which any part of the estate may be, the decedent having died out of the State, and not resident thereof at the time of his death.

Fourth. In the county in which any part of the estate may be, the decedent not being a resident of the State, but dying within it, and not leaving estate in the county in which he died.

Fifth. In all other cases, in the county where application for letters is first made."

Where the deceased was a resident of the State, and the instances are rare where the allottees were not residents of Oklahoma, it is plain that the first provision of the section above quoted applies, and that the county court of the county in which the allottee lived at the time of his death is the court "having jurisdiction of the settlement of the estate of said deceased allottee," as provided in the provision to Section 9.²⁸

§ 181. **Not Necessary That Administration Proceedings be Pending.**—The approval of conveyances of heirs is a part of the administration proceedings proper, and the power to approve in no wise depends upon the pendency of administration proceedings upon the estate of the decedent. The jurisdiction meant is potential and not actual jurisdiction in the sense that proceedings have been taken, for the purpose of administering upon the estate of the deceased. If the court is authorized under Section 6193 of the Revised Statutes to administer the estate, that court is authorized to approve the deed.²⁹

The approval, however, must be by the court and not

²⁸ Mullen v. Short, 38 Okla. 333, 133 Pac. 230; Bartlett v. Oil Co., 218 Fed. (DC) 380; Okla. Oil Co. v. Bartlett, 236 Fed. (CA) 488.

²⁹ Mullen v. Short, 38 Okla. 333, 133 Pac. 230; Bartlett v. Oil Co., 218 Fed. (DC) 380; Oklahoma Oil Co. v. Bartlett, 236 Fed. (CCA) 488.

re of the court; in other words, he must be acting as a
t and not as a judge.³⁰

nder Section 1823 Revised Statutes of 1910, however, the
ate court is always open for the transaction of probate
ness, and the County Judge may approve said deed at
place within the county, although absent from the
nty seat and not engaged in holding court.³¹

182. Act of Court in Approving Deed is Administrative and Not Judicial.—The act of the county court in ap-
ing conveyances is administrative and not judicial.³²

onsequently the findings of the court and its recital of
diction or other facts, are not adjudications. Such
ngs are not conclusive and are subject to collateral at-
³³

ie above ruling, however, does not hold good where
lar administration proceedings upon the estate of the
tee were pending at the time in the court which ap-
ed the deed. A finding by the court under such cir-
stances of the facts necessary to give it jurisdiction of
state of the decedent would be conclusive, and not sub-
to collateral attack.³⁴

183. No Special Procedure Necessary.—The approval
e deed, being administrative and not judicial, the court
t bound to follow any special procedure; nor is it in

Ma-Harry v. Eatman, 29 Okla. 46, 116 Pac. 935.

United States v. Black, 247 Fed. 942.

Lochran v. Blanck, 53 Okla. 317, 156 Pac. 324; *Hope v. Foley*,
Pac. 727; *Brader v. James*, 49 Okla. 734, 154 Pac. 560; *Jennings*
Good, 192 Fed. (CCA) 507; *Bartlett v. Oklahoma Oil Co.*, 218
(DC) 380; *Oklahoma Oil Co. v. Bartlett*, 236 Fed. (CCA) 488;
v. Simpson, 166 Pac. 146.

Hope v. Foley, 157 Pac. 727; *Bartlett v. Oklahoma Oil Co.*, 218
(DC) 380; *Buck v. Simpson*, 166 Pac. 146.

Oklahoma Oil Co. v. Bartlett, 236 Fed. (CCA) 488.

considering the question of such approval bound by the probate rules promulgated by the Supreme Court.³⁵

It is not necessary that the approval by the court be embodied in any formal order or journal entry; any writing or order evidencing the approval by the court of the deed is sufficient. The word "approved" indorsed upon the deed satisfies the requirements of the statute.³⁶

No appeal lies from the action of the county court in approving or disapproving such conveyances.³⁷

§ 184. Payment of Consideration at Time of Approval Unnecessary.—It is unnecessary that an actual payment of the consideration for a deed take place at the time of the approval of the conveyance. Any consideration which would support a conveyance with a grantor not an Indian is sufficient.³⁸

³⁵ *Cochran v. Blanck*, 53 Okla. 317, 156 Pac. 324; *Tiger v. Creek County Court*, 45 Okla. 701, 146 Pac. 912; *Campbell v. Dick*, 157 Pac. 1062.

³⁶ *Campbell v. Dick*, 157 Pac. 1062.

³⁷ *Tiger v. Creek County Court*, 45 Okla. 701, 146 Pac. 912.

³⁸ *McCosar v. Chapman*, 157 Pac. 1059; *Hope v. Foley*, 157 Pac. 727; *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 56.

CHAPTER XXIV.

REMOVAL OF RESTRICTIONS—ALLOTTED LAND.

1. New Scheme of Restriction.
2. Act Effective July 27, 1908.
3. Restrictions Removed.
4. Minors.
5. Lands from Which Restrictions Removed Not Subject to Forced Sale.
6. Extension of Restrictions.
7. Act Does Not Reimpose Restrictions.
8. Presumption That Land is Unrestricted.
9. Restrictions Upon Voluntary Alienation.
10. Restrictions Upon Involuntary Alienation.

185. New Scheme of Restriction.—The passage of the act of May 27, 1908, at least so far as allotted land is concerned, inaugurated a new plan of restriction. The Act is complete within itself, and Congress intended thereby to establish a new status with reference to the alienation of the land and of all of the Five Civilized Tribes, based upon the amount of Indian blood. It repealed all former laws and ordinances and substituted its provisions in their stead. The provisions of the different treaties prescribing periods of restriction and conditions of alienation were entirely abolished, including for example, the provisos in Section 4 of the Original Creek Agreement that the lands of minors should not be sold during minority, and the provision of the Choctaw-Chickasaw Supplemental Agreement with reference to the sale of allotted land for less than its appraised value. By its passage the difference that had hitherto prevailed in the laws applicable to the several tribes was removed and the restrictions upon the land of each were determined upon the basis of Indian blood, under the Act.¹

¹*La-Harry v. Eatman*, 29 Okla. 46, 116 Pac. 935; *Lewis v. Allen*, Okla. 584, 142 Pac. 384; *Henley v. Davis*, 156 Pac. 337; *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 56; *Nunn v. Hazelrigg*, 216 Fed.

§ 186. **Act Effective July 27, 1908.**—Section 1 enacts with reference to the date upon which it shall become effective, as follows: "That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall as regards restrictions upon alienation or incumbrance, be as follows:" The Act was approved upon May 27, 1908 and there can be no question that so far as allotted land is concerned, it became effective on the first minute of the day of July 27, 1908.²

§ 187. **Restrictions Removed.**—That part of Section 1 relating to restrictions upon allotted land is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that from and after 60 days from date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads of said allottees enrolled as intermarried whites, as freedmen, and as mixed blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads of said allottees enrolled as mixed blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed blood Indians having half or more than half Indian blood, including minors of such degrees of blood, and all allotted lands of enrolled full bloods, and enrolled mixed bloods of three-quarters or more Indian blood, including minors of such degrees of blood shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April 26, 1908.

(CCA) 330; *Chupco v. Chapman*, 170 Pac. 259; *Bailey v. King*, 171 Pac. 763; *King v. Mitchell*, 171 Pac. 725; *Welch v. Ellis*, 163 Pac. 321.

² *Roth v. Union National Bank*, 160 Pac. 505; *Egan v. Ingram*, 161 Pac. 225; *Boxley v. Scott*, 162 Pac. 688; *Hopkins v. Union National Bank*, 235 Fed. (CCA) 95.

cept that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds the benefit of the respective Indians as he may prescribe."

By such Section the allotted lands of the Five Civilized Tribes were divided into three classes based upon the Indian blood of the allottees as follows: First. Both homestead and surplus allotments of allottees having less than half Indian blood. Second. Surplus allotments of allottees of half and less than three-quarters Indian blood. Third: Homesteads of allottees of one-half or more Indian blood and both homestead and surplus allotments of allottees having three-fourths or more Indian blood.

Classes one and two above mentioned in the words of the Act "shall be free from all restrictions." There can be no question that after July 27, 1918, the classes of land last mentioned were absolutely unrestricted and subject to any form of alienation.³

§ 188. **Minors.**—Unlike all legislation removing restrictions enacted prior to that date, the Act of May 27, 1908, expressly included minors. Section 6 of said Act, however, provided that the property of minor allottees shall be subject to the jurisdiction of the probate court, and it is well settled that whereas Section 1 removed restrictions upon the lands of minors of the specified degrees of blood, Section 6 imposed a condition in the nature of a restriction upon said land. The settled construction of the two sections is

³Goat v. United States, 224 U. S. 458, 56 L. Ed. 841; Heckman v. United States, 224 U. S. 413, 56 L. Ed. 820; Mullen v. United States, 224 U. S. 448, 56 L. Ed. 834; Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941; Jefferson v. Winkler, 26 Okla. 653, 110 Pac. 755; Box v. Scott, 162 Pac. 688; Henley v. Davis, 156 Pac. 337; Bailey v. G., 157 Pac. 763; Benadnum v. Armstrong, 44 Okla. 637, 146 Pac. 691; Allison v. Crummey, 166 Pac. 691.

that the lands of such minors are alienable under Section 1, but under Section 6 a sale can be made only through the probate court. A sale attempted to be made by a minor except by regular proceedings in the Probate Court, unlike a sale by a minor not a member of the Five Civilized Tribes, is not voidable but absolutely void. (See title, minors.)

The condition that such sale should be made only through the probate court endured only during the minority of the allottee. Upon attaining his majority, after the passage of said Act, he was authorized to convey his lands without the supervision of the Probate Court, although at the time of the passage of the Act he was a minor.⁴

§ 189. Lands From Which Restrictions Removed Not Subject to Forced Sale.—Although by each of the treaties under which the lands of the several Tribes were allotted the restricted lands of such allottees at the time of the passage of the Act of May 27, 1908, were protected by provisions in the nature of exemptions, Congress took the additional precaution of enacting Section 4 of said Act, which is as follows:

“Provided that allotted lands shall not be subject or be liable to any form of personal claim or demand against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law.”

Under said provision the allotted land of allottees was not subject or liable to any form of personal claim or demand contracted or existing prior to the removal of the restrictions by said Act.⁵

⁴ *Hopkins v. United States*, 235 Fed. (CCA) 95; *Lewis v. All* 42 Okla. 584, 142 Pac. 384; *Henley v. Davis*, 156 Pac. 337.

⁵ *Roth v. Union National Bank*, 160 Pac. 505; *Cowokochee Chapman*, 171 Pac. 50.

Extension of Restrictions.—As heretofore stated, I divided the lands of allottees into three classes. Restrictions of whatever nature were removed upon the sale of lands of allottees of classes one and two. With respect to the third class, however; that is, the homesteads of allottees having half or more Indian blood, and the undivided and surplus of allottees having three-fourths Indian blood were restricted until April 26, 1931. This date coincides with the date fixed by the Act of April 26, 1906, in case of full bloods of all the Five Civilized Tribes.

The restricted periods upon such lands, differed from the different Tribes under the original acts and treaties, except in the case of full bloods whose restriction was extended by the Act of April 26, 1906, above mentioned. They all expired prior to the time fixed by Section 1 of the Act of April 26, 1906, therefore, operated as an extension of the restricted period as to all of the allottees mentioned except full bloods. Such extension of the restricted period is within the powers of Congress and such Act is constitutional and valid.⁶

Act Does Not Re-Impose Restrictions.—Section 1 of the Act of April 26, 1906, provides that:

"No restriction shall be construed to impose restrictions upon land by or under any law prior to the passage of this Act."

Section 1 specifically declares that it was not the intention of Congress to impose restrictions upon allotted land upon which restrictions had theretofore been removed. It was held by the Supreme Court of the United States that the provision included lands upon which the restriction expired by reason of the expiration of the re-

⁶ *Man v. United States*, 224 U. S. 413, 56 L. Ed. 820; *Brader v. United States*, 62 L. Ed. 335; *Talley v. Burgess*, 62 L. Ed. 340.

stricted period prescribed in the treaties under which the land was allotted.⁷

It, therefore, seems plain that no restrictions were imposed by Section 1 upon any allotted land which was at the time of its passage unrestricted.⁸

It has been held, however, that such restrictions did apply to land allotted after the passage of said Act, although the land would have been unrestricted if it had been allotted prior to such passage.⁹

§ 192. **Presumption That Land Is Unrestricted.**—It has been held that the presumption is that one who undertakes to convey his allotted land belongs to the class of allottees who are authorized to convey such land, and that the burden of disproving such capacity is with him who asserts it.¹⁰

§ 193. **Restrictions Upon Voluntary Alienation.**—Section 1 provides that the lands of allottees upon which restrictions are extended "shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance." All provisions of the different treaties upon this subject were repealed by said Act and the words herein used substituted in their places. The wording, however, is not dissimilar to that of the various statutes which it supersedes, and will no doubt, be construed to include any form of voluntary alienation.

§ 194. **Restrictions Upon Involuntary Alienation.**—Section 4 provides as follows:

"Provided that allotted lands shall not be subjected or held liable to any form of personal claim or demand against

⁷ Bartlett v. United States, 235 U. S. 72, 59 L. Ed. 137.

⁸ Ma-Harry v. Eatman, 29 Okla. 46, 116 Pac. 935; Hopkins v. United States, 235 Fed. (CCA) 95.

⁹ Taylor v. United States, 230 Fed. (CCA) 580.

¹⁰ Bettes v. Brower, 184 Fed. (DC) 342.

REMOVAL OF RESTRICTIONS.

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allottees arising or existing prior to the removal of restrictions other than contracts heretofore expressly permitted by law."

While this section evidently applies to the lands of the allottees upon which restrictions are removed by said Act, it has been held that it also applies to the lands upon which restrictions have been extended by said Act.¹¹

Burney v. Burney, 160 Pac. 85.

CHAPTER XXV.

MINORS.

§ 195. Division of Subject.

MINOR ALLOTTEES.

196. Minor, Who Was, Prior to May 27, 1908.
197. Under Act of May 27, 1908.
198. Conveyance by Minor Allottee, Under Act of May
Void.
199. Conveyance of Minor Creek Allottee Void Under
4, Original Agreement.
200. Conveyance by Minor Allottee, Under Act of April
Void.
201. Conveyance by Minor Allottee After Expiration
stricted Period, Voidable Only.
202. Presumption of Contracting Capacity.
203. Ratification of Conveyance After Majority.
204. Marriage of Minor Allottee.
205. Removal of Disabilities.
206. Minor Over Eighteen Years of Age.
207. Manner of Disaffirmance.
208. Misrepresentation by a Minor as to Age.
209. Return of Consideration.

MINOR HEIRS.

210. Minor Heir Prior to Act of May 27, 1908.
211. Act of April 26, 1906.
212. Act of May 27, 1908.

MINORS.

§ 195. **Division of Subject.**—The question of v minors, and the law peculiarly applicable to them i treated from the standpoint of minor allottees and heirs.

MINOR ALLOTTEES.

16. **Minor—Who Was, Prior to May 27, 1908?**—Section 5 of the Cherokee Agreement and Section 5 of the Chickasaw Supplemental Agreement defined the 'minors.' The two sections of the above agreements are identical and are as follows:

The word 'minor' shall be held to mean males under the age of 21 years, and females under the age of 18 years."

The term was not defined in the other treaties, but by Act of May 2, 1890, the laws contained in Chapter 73 of Mansfield's Digest of the laws of Arkansas, so far as they were not locally inapplicable, or in conflict with any law of Arkansas, were put in force in the Indian Territory and were in force in all the nations, with the possible exception of the Choctaws and Chickasaws, at the time of the adoption of the several agreements. Section 3464 Mansfield's Digest (on 2360 Indian Territory Statutes) provides as follows:

Males of the age of 21 years and females of the age of 18 years shall be considered of full age for all purposes, and until those ages are attained they shall be considered minors."

The term "minor" in the Acts of Congress and treaties in which the word was not otherwise specifically defined, should be construed with reference to its meaning as defined by the law in force in the Indian Territory at the time of its enactment or adoption. It, therefore, follows that a minor, whether of the Choctaw, Chickasaw and Cherokee Tribes, or of the Creek and Seminole Tribes, by virtue of the provisions of the respective agreements, or of the Arkansas law, was a male under 21 years of age and a female under 18 years of age.¹

¹ *Id. v. Thompson*, 204 Fed. (CCA) 955.

§ 197. **Under Act of May 27, 1908.**—The Act of May 1908, repealed all former laws and treaties and substituted its provisions in their stead. Section 2 provides:

“And the term ‘minor’ or ‘minors,’ as used in this Act, shall include all males under the age of 21 years and females under the age of 18 years.”

The above definition was applicable to minor allot in all matters involving the construction of the Act of May 27, 1908.²

The law takes no cognizance of the fractions of a minor. A minor, if a male, becomes of full age on the first moment of the day before his twenty-first anniversary, and if a female, of the day before her eighteenth anniversary.³

§ 198. **Conveyance by Minor Allottee Under Act of May 27, 1908, Void.**—Restrictions upon alienation of lands of minor allottees of certain degrees of blood are expressly removed by Section 1 of the Act of May 27, 1908. Section 6 of said Act, however, provides that the property of minor allottees shall be subject to the jurisdiction of the probate court, and it is definitely settled that whereas Section 1 removes restrictions upon the lands of minor allottees of specific degrees of blood, Section 6 imposes a condition upon the nature of a restriction upon said land, to-wit; that the sale thereof shall be made only through the probate court. A sale attempted to be made by a minor, except by regular proceedings in the probate court is, void, not by reason of the incapacity of such minor, but because it is in violation of the restriction upon alienation.

² *Jefferson v. Winkler*, 26 Okla. 653, 110 Pac. 755; *Kirkpatrick v. Burgess*, 28 Okla. 121, 116 Pac. 764; *Gill v. Haggerty*, 32 Okla. 122 Pac. 641; *Tirey v. Darneal*, 37 Okla. 606, 111, 132 Pac. 1; *Bell v. Fitzpatrick*, 53 Okla. 574, 157 Pac. 334; *Egan v. Ingram*, 58 Okla. 225; *Bell v. Cook*, 192 Fed. (CC) 597; *Barbre v. Hood*, 214 Okla. 473; *Truskett v. Closser*, 236 U. S. 223, 59 L. Ed. 549; *Allison v. Crummey*, 166 Pac. 691; *Welch v. Ellis*, 163 Pac. 321.

³ *United States v. Wright*, 197 Fed. (CCA) 297.

rule was first announced in *Jefferson v. Wink* in the case of *Tirey v. Darneal* and was afterwards by the Supreme Court of the United States *v. Closser*.⁴

It is held that a sale by a minor allottee except in proper proceedings in the probate court is void in the hands of an innocent purchaser for value.⁵

The court has no jurisdiction under Section 6364 (10), to authorize the guardian to mortgage the lands of a minor for the purpose of paying the debts of the minor, when such debts were contracted during restricted periods, and such mortgage is void.⁶

Conveyance by Minor Creek Allottee Void Under Original Agreement.—Section 4 of the Original Agreement provided that the allotment of a minor be sold during his minority. An attempted sale by a minor allottee, prior to the Act of May 27, 1908, is void for the reason that it was in violation of the restriction upon the alienation of said land. It is believed that the same legal proposition is presented in the case of an attempted alienation by such Creek minor allottee of either tribe under the Act of

⁴ *Closser*, 236 U. S. 223, 59 L. Ed. 549; *Jefferson v. Wink*, 10 Okla. 653, 110 Pac. 755; *Gill v. Haggerty*, 32 Okla. 407, 110 Pac. 854; *Campbell v. McSpadden*, 34 Okla. 377, 127 Pac. 854, 143 Pac. 1138; *Bruner v. Cobb*, 37 Okla. 228, 131 Pac. 1087; *Collins v. Beard*, 46 Okla. 310, 148 Pac. 846; *McKeever v. Beard*, 46 Okla. 310, 148 Pac. 846; *Bell v. Fitzpatrick*, 53 Okla. 574, 161 Pac. 225; *Catron v. Allen*, 161 Pac. 225; *Allen v. Allen*, 42 Okla. 584, 142 Pac. 384; *Henley v. Allen*, 42 Okla. 584, 142 Pac. 384; *Brewer v. Dodson*, 159 Pac. 329; *Barbre v. Dodson*, 159 Pac. 329; *Etchen v. Cheney*, 235 Fed. (CCA) 473, 228 Fed. 658; *Anderson v. Cheney*, 39 Okla. 279, 134 Pac. 1120.

⁵ *Investment Co. v. Beard*, 46 Okla. 310, 148 Pac. 846.

⁶ *National Bank of Bartlesville*, 160 Pac. 505.

May 27, 1908, without the supervision of the probate court. In each case it was void not on account of the incapacity of the minor, but because the land of such minor was restricted during his minority.⁷

§ 200. **Conveyance by Minor Allottee Under Act of April 21, 1904, Void.**—The Creek was the only tribe which made minority a condition of inalienability. In the other tribes, the minor, so far as the restriction upon alienation imposed in the original agreements were concerned, was upon the same footing as the other allottees. The Act of April 21, 1904 removed restrictions upon the surplus lands of all allottees not of Indian blood, except minors. It seems clear, although the question has not been decided by the courts, that an attempted alienation by a minor allottee of Indian blood, under the Act of April 21, 1904, would be void. The Act of removal not applying to minors of the class mentioned, the surplus lands of such minors during their minority, as defined by the law in force at the time of the passage of said Act, would continue subject to the restrictions upon alienation imposed by the laws and treaties of the tribe of which he was a member, and such conveyance, being in violation of said restrictions, would be void.⁸

§ 201. **Conveyance by Minor Allottee After Expiration of Restricted Period, Voidable Only.**—The restrictions upon the alienation of surplus Creek allotments imposed by the Creek treaties expired on August 8, 1907, and, except in the case of full bloods such lands were subject to alienation at the time of the passage of the Act of May 27, 1908.

⁷ *Blakemore v. Johnson*, 24 Okla. 544, 103 Pac. 554; *Braddon McShay*, 26 Okla. 35, 107 Pac. 916; *Stevens v. Elliott*, 30 Okla. 118 Pac. 407; *Campbell v. Mosley*, 38 Okla. 374, 132 Pac. 1098; *Frey v. Colbert*, 7 Ind. Ter. 338, 104 S. W. 638; *Alfrey v. Colbert*, Fed. 231; *Parks v. Berry*, 169 Pac. 884.

⁸ *Campbell v. Mosley*, 38 Okla. 374, 132 Pac. 1098.

In certain cases, also, a part of the surplus allotments of the Choctaw and Chickasaw allottees were alienable prior to the passage of said Act. The guardianship of the United States government over the allottee and his land extended only during the restricted period, when such guardianship ceased. Such allottee and his unrestricted land became immediately subject to the laws of the State of Oklahoma to the same extent as if he were a citizen not of Indian blood. It would seem, therefore, that such minor allottee, with respect to the sale of his unrestricted land, would be subject only to the incapacity incident to minority by the laws of the State, and that his contract with reference to such land would be voidable and not void.

§ 202. **Presumption of Contracting Capacity.**—It has been held that the presumption is that one who contracts with reference to his land has attained the age at which he is authorized by law to convey the same and that the burden is upon him who seeks to avoid a conveyance, by reason of the infancy of such maker, to establish such fact.⁹

§ 203. **Ratification of Conveyance After Majority.**—A general statement may be made that a conveyance, void at the time of its execution, by reason of the minority of the maker may not be affirmed after majority by a new deed executed upon the original consideration.¹⁰

Although a contrary holding was made in the case of *Stron v. Allen*, 161 Pac. 829. The courts, indeed, have shown a marked disposition to narrow such rule, and have

⁹ *Jordan v. Jordan*, 162 Pac. 758; *Freeman v. First National Bank of Boynton*, 44 Okla. 146, 143 Pac. 1165; *Rice v. Ruble*, 39 Okla. 51, 134 Pac. 49; *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 1; *Sharshontay v. Hicks*, 166 Pac. 881, 161 Pac. 820; *Heffner v. Harmon*, 159 Pac. 650; *Hutchinson v. Brown*, 167 Pac. 624; *Tyrell Shaffer*, 174 Pac. 1074.

¹⁰ *Bragdon v. McShea*, 26 Okla. 35, 107 Pac. 916; *Alfrey v. Collett*, 168 Fed. (CCA) 231, 104 S. W. 638; *Ehrig v. Adams*, 152 Pac. 169 Pac. 645.

upheld deeds, made in confirmation of deeds executed in minority, where there was any consideration what for the second deed.¹¹

§ 204. **Marriage of Minor Allottee.**—The power of legislation with reference to restricted Indian lands is a plenary one and it is for Congress to say when and under what conditions the restrictions upon said land shall be removed. When the land becomes unrestricted it is subject to the laws of the State of Oklahoma. Until the restrictions are removed the guardianship of Congress for such restricted lands is exclusive. The enabling act under which the Territory of Oklahoma was admitted to statehood, specifically provided that nothing contained in the proposed constitution should limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians and their land which it would have been competent to make if said Act had never passed. As held by Justice Hayes in *Jefferson v. Winkler*:

“It is unnecessary to comment upon the extent or limitation of the authority over the lands and property of said Indian that is, by said provision of the enabling Act, reserved to the United States government; for whatever the extent of that authority or its limitations, we think cannot be questioned that said authority reserved is sufficient to retain in the government of the United States jurisdiction over the restricted lands of said Indians to terminate and provide how and in what manner such restriction shall be removed; and that, until such restrictions are removed, the lands of said Indian minor allottees are within the jurisdiction of the probate courts of the State with power in said courts to order the sale thereof for any purpose. Since the power to remove such restrictions is wholly within Congress, it may say upon what terms

¹¹ *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 56; *Lewis v. Lewis*, 42 Okla. 584, 142 Pac. 384; *Gilcrease v. McCullough*, 162 Pac. 1173; *Bell v. Mills*, 158 Pac. 1173.

conditions they shall be removed, and under the supervision of what court or officer the sale of same shall be made."

In the Act of May 27, 1908, and in the former Acts and treaties, Congress defines minors, which definition is controlling as long as restrictions remain upon the land, and the fact of minority constitutes a restriction. When the land is no longer restricted, the guardianship and exclusive jurisdiction of Congress ceases and the land becomes subject to the laws of the State of Oklahoma, including general legislation with regard to the contracting capacity of minors.

Section 1140 of the Revised Statutes of 1910 provides that the marriage of a minor shall remove the disabilities of minority and authorize such minor to contract with reference to his land. Such statute has no application to minor allottees, with respect to whose land such minority constitutes a restriction under the Federal Statutes, and the marriage of such minor has no effect upon the status of his restricted land.¹²

Such marriage does not affect guardianship proceedings upon the estate of such minor, with respect to his restricted land, and, notwithstanding such marriage, a guardian may make a valid sale of such minor's land through the proper court.¹³

205. Removal of Disabilities.—Sections 4427 to 4430 of the Revised Laws of 1910 authorize the District Courts to

Truskett v. Closser, 236 U. S. 223, 59 L. Ed. 549; *Bell v. Cook*, 100 Fed. (CC) 597; *Kirkpatrick v. Burgess*, 28 Okla. 121, 116 Pac. 589; *Gill v. Haggerty*, 32 Okla. 407, 122 Pac. 641; *Tirey v. Darneal*, 33 Okla. 606, 611, 132 Pac. 1087; *Reid v. Taylor*, 43 Okla. 816, 144 Pac. 589; *Klaus v. Campbell-Ratliff Land Co.*, 48 Okla. 648, 150 Pac. 589; *Dodd v. Cook*, 41 Okla. 105, 137 Pac. 348; *Jefferson v. Winkler*, 42 Okla. 653, 110 Pac. 755.

Kirkpatrick v. Burgess, 28 Okla. 121, 116 Pac. 764; *Reid v. Taylor*, 43 Okla. 816, 144 Pac. 589.

confer upon minors the rights of majority and to transact business and make contracts in all respects as if they were of legal age. For the reasons that have been stated in reference to the marriage of minors, such proceeding is not effective as to minor allottees with respect to the restricted land. The State law cannot operate to change or modify the restrictions provided by the Federal law and can the District Court under the State law remove the condition of restrictions pertaining to minority prescribed by the Federal Statute.¹⁴

§ 206. **Minor Over 18 Years of Age.**—Section 885 of the Revised Statutes of 1910 provides that a minor, if he has attained the age of 18 years, can disaffirm his contract only by restoring the consideration. This provision likewise for the same reasons has no application to a minor allottee with respect to his restricted land. The contract of a minor is generally voidable and not void. The contract, however, of a minor allottee, with respect to his restricted land, is void by express enactment of Congress.¹⁵

§ 207. **Manner of Disaffirmance.**—An infant may disaffirm his contract with respect to his restricted land by different means. Any act showing unequivocally a renunciation of the contract or a disposition not to abide by the contract made during minority, is sufficient.¹⁶

The bringing of suit to cancel a conveyance is a sufficient disaffirmance without other or previous notice.¹⁷

¹⁴ Priddy v. Thompson, 204 Fed. (CCA) 955; Bell v. Fitzpatrick, 53 Okla. 574, 157 Pac. 334; Egan v. Ingram, 161 Pac. 225; v. Dodson, 159 Pac. 329.

¹⁵ Barbre v. Hood, 214 Fed. 473, 228 Fed. (CCA) 658; Colvestment Co. v. Beard, 46 Okla. 310, 148 Pac. 846.

¹⁶ Grissom v. Biedelman, 35 Okla. 343, 129 Pac. 853.

¹⁷ Ryan v. Morrison, 40 Okla. 49, 135 Pac. 1049; Reid v. ... 43 Okla. 816, 144 Pac. 589.

Such disaffirmance may be made by the minor after he attains his majority.¹⁸

Or during minority through his guardian.¹⁹

§ 208. Misrepresentation By a Minor As To Age.—

There is a conflict in the authorities as to whether a minor will be estopped to disaffirm his contract with respect to restricted land, by misrepresentation of his age to the purchaser. It was held in *International Land Company v. Marshall*, 98 Pac. 951, that he was estopped and that the courts would not lend its aid to annul such void conveyance where he had misrepresented his age at the time of sale. A different conclusion was reached in *Alfrey v. Colbert*, Fed. (CCA) 231, and in *Collins Investment Company v. Ford*, 46 Okla. 310, 148 Pac. 846, the court specifically declined to follow *International Land Company v. Marshall*.

209. Return of Consideration.—Tender of the consideration received for the void sale is not a condition precedent in an action by the minor to set aside such void conveyance.²⁰

Nor need he plead or offer any reason for not doing so.²¹ It has been held, however, that the minor will be required

¹⁸ *Ryan v. Morrison*, 40 Okla. 49, 135 Pac. 1049.

¹⁹ *Reid v. Taylor*, 43 Okla. 816, 144 Pac. 589; *International Land Co. v. Marshall*, 22 Okla. 693, 98 Pac. 951; *Ryan v. Morrison*, 40 Okla. 49, 135 Pac. 1049.

²⁰ *Stephens v. Elliott*, 30 Okla. 41, 118 Pac. 407; *Tirey v. Dard*, 37 Okla. 606, 611, 132 Pac. 1087; *McKeever v. Carter*, 53 Okla. 157 Pac. 56; *Bell v. Fitzpatrick*, 53 Okla. 574, 157 Pac. 334; *Egan v. Ingram*, 161 Pac. 225; *Winters v. Okla. Portland Cement Co.*, 164 Pac. 965; *Parks v. Berry*, 169 Pac. 884; *Rice v. Anderson*, 39 Okla. 279, 134 Pac. 1120.

²¹ *McKeever v. Carter*, 53 Okla. 360, 157 Pac. 56; *Bell v. Fitzpatrick*, 53 Okla. 574, 157 Pac. 334; *Egan v. Ingram*, 161 Pac. 225; *Winters v. Okla. Portland Cement Co.*, 164 Pac. 965; *Parks v. Berry*, 169 Pac. 884; *Rice v. Anderson*, 39 Okla. 279, 134 Pac. 1120.

to return the consideration before relief is granted when he has misrepresented his age.²²

But where the action is maintained by a third person who has purchased the land, such assignee is not charged with misrepresentation of the minor.²³

And the court may make a return of the consideration precedent, if it appears that the minor has consideration received in his possession and can return

The general rule seems to be that the minor will be required to return the consideration received if it is in his possession. But if, for any reason, it did not come into his hands or has been squandered or spent, and he cannot turn it, its return will not be adjudged.²⁵

And the burden of the proof seems to be upon the defendant to show that the consideration is now in the hands within the control of the minor and can be returned.²⁶

The same rule has been adopted with reference to a sale conducted by a guardian through the probate court. The ward will be required to return the consideration received, if it is in his hands; otherwise the sale will be set aside without a return of the consideration.²⁷

MINOR HEIRS.

§ 210. **Minor Heir Prior to Act of May 27, 1908.**—of Congress of May 2, 1890, June 7, 1897, and June 28, 1906.

²² *Alfrey v. Colbert*, 7 Ind. Ter. 338, 104 S. W. 638; *International Land Co. v. Marshall*, 22 Okla. 693, 98 Pac. 951.

²³ *Parks v. Berry*, 169 Pac. 884.

²⁴ *Egan v. Ingram*, 161 Pac. 225; *International Land Co. v. Marshall*, 22 Okla. 693, 98 Pac. 951.

²⁵ *Blakemore v. Johnson*, 24 Okla. 544, 103 Pac. 554; *Steve Elliott*, 30 Okla. 41, 118 Pac. 407; *Gill v. Haggerty*, 32 Okla. 407, 118 Pac. 641; *Bruner v. Cobb*, 37 Okla. 228, 131 Pac. 165; *Tirey v. Neal*, 37 Okla. 606, 111, 132 Pac. 1087; *Coody v. Coody*, 39 Okla. 719, 136 Pac. 754; *Alfrey v. Colbert*, 168 Fed. (CCA) 231.

²⁶ *Tirey v. Darneal*, 37 Okla. 606, 111, 132 Pac. 1087; *Reed v. Reed*, 43 Okla. 816, 144 Pac. 589.

²⁷ *Winters v. Oklahoma Portland Cement Co.*, 164 Pac. 416; *Bridges v. Rea*, 166 Pac. 416.

tended in force in the Indian Territory certain laws State of Arkansas contained in Mansfield's Digest, and made them more or less applicable to the Indians as the white citizens of the Territory. Section 2 of Act of April 28, 1904, provided:

the laws of Arkansas heretofore put in force in the Territory are hereby continued and extended in operation, so as to embrace all persons and estates in Territory, whether Indian, freedmen, or otherwise, and full complete jurisdiction is hereby conferred upon District Courts in said territory in the settlements of estates of decedents, the guardianships of minors and estates, whether Indian, freedmen, or otherwise."

At the passage of this Act, if not before, the persons, and estates of the members of the Five Civilized Tribes in the Indian Territory became subject to the laws of Arkansas in force in said territory. By such extension of laws in force in the Indian Territory to the lands and interests of the Indians, however, Congress did not intend to repeal or set aside its own laws and treaties imposing restrictions upon the alienation of the lands of the Five Civilized Tribes. Such laws were made applicable to the members of the tribes, with respect to their lands, subject on the condition that any law so extended in force, inconsistent with the laws of Congress establishing restrictions upon alienation, should not apply but be held in suspension during the period of inalienability. When such lands ceased to be subject to restrictions upon their alienation, either by expiration of the restricted period, or the repeal of the laws prescribing such restrictions, they became automatically subject to the laws in force in the Territory, or State, and the guardianship and exclusive jurisdiction of Congress over such lands ceased.²⁸

Id. v. Parker, 235 U. S. 42, 59 L. Ed. 121; Washington v. Taylor, 35 U. S. 422, 59 L. Ed. 295; Taylor v. Parker, 33 Okla. 199, 103 Pac. 573; Palmer v. Cully, 53 Okla. 454, 153 Pac. 154.

The rule is well expressed by Justice Kane in the case of *Taylor v. Parker*:

"The effect of the Act of April 28, 1904 was to make the laws of Arkansas, theretofore put in force in the Indian Territory, applicable to another class of persons and estates, to-wit: Indians and their property insofar as it was alienable under the acts of Congress then bearing upon it. The extension of the law of wills enabled the Indian to devise all of his alienable property by will, made in accordance with the laws of the State of Arkansas, but did not operate to remove any of the restrictions, theretofore placed upon the lands of Indians by Acts of Congress."

By the enabling Act and Constitution of the State, the laws of Oklahoma Territory were extended over that part of the State of Oklahoma which was formerly the Indian Territory and substituted for the Arkansas law, theretofore in force therein. On November 16, 1907, the date of the admission of the State into the Union, the Oklahoma law became applicable to the members of the Five Civilized Tribes, subject to the same condition that qualified the Arkansas law, to-wit: that they should not apply to the restricted lands of said members, insofar as they were inconsistent with any provisions, or future Act of Congress pertaining to restrictions upon alienation.²⁹

From the foregoing statement, it seems to follow that a minor, at least, prior to the Act of May 27, 1908, with respect to his inherited land, which came to him unrestricted or was for any reason unrestricted in his hands, was subject only to the disabilities of minority as provided for by the Arkansas law, and after November 16, 1907, by the Oklahoma law, and that his contracts with respect to land would be voidable and not void. The Arkansas law extended in the Indian Territory did not provide, as the Oklahoma law does, that the incapacity of minority was removed by the marriage of a minor, nor was there any p

²⁹ *Bell v. Cook*, 192 Fed. (CC) 597.

on for the removal of disabilities by decree of court. When the laws of Oklahoma became effective, however, it was believed that those provisions in Oklahoma law, as well as the provision for the return of the consideration, upon affirmation by a minor more than 18 years of age, were operative as to the unrestricted lands of minors.

211. Act of April 26, 1906.—Section 22 of the Act of April 26, 1906, authorized the adult heirs of any deceased Indian to sell and convey their inherited lands. It is clear that the words "adult" and "minor heirs" were used with reference to the definition of those terms prevailing in the Indian Territory at the time of its passage, to-wit: adults above and minors below the age of 21 if a male, 18 if a female. Such definition of "adult" and "minor" thus became a part of the act itself and was not subject to be changed by the Arkansas or Oklahoma law. The deed of a minor who undertook to convey his inherited, restricted land, was void and not voidable; this for the reason that the act exempted from restrictions theretofore imposed, only adult heirs in accordance with the Federal definition of that term. The land of one who within the meaning of the said definition, was a minor at the time of the attempted conveyance, was restricted and the deed thereto was absolutely void. Such rule, however, would not hold good in the case of the inherited lands of minor heirs which were independent of the said Act, unrestricted. A conveyance by such minors would be subject only to the disabilities of minority, under the Indian Territory and afterwards the Oklahoma law, and would be voidable and not void.

§ 212. Act of May 27, 1908.—Section 9 of the Act of May 27, 1908, is practically a re-enactment of Section 22 of the Act of April 26, 1906, except that it removed restrictions upon the alienation of inherited land by all heirs, regardless of whether they are adult or minors. Section 22 removed restrictions upon the alienation of inherited lands

by a minor, only when there were both adult and minor heirs, and sales by minor heirs were authorized only when made in connection with sales by adult heirs. Section 9 of the Act of May 27, 1908, is the only Section of the Act that applied to inherited lands. The first eight sections seem to legislate exclusively with reference to allotted lands. The holding that the attempted sale of allotted lands by minors, under the Act of April 27, 1908, is void, is predicated upon a construction of Sections 1, 2 and 6 of the Act. Section 1 removed all restrictions upon the alienation of the allotted lands of minors. But Section 6 provided that the persons and property of minor allottees should be subject to the jurisdiction of the Probate Courts of the State of Oklahoma, and Section 2 defined the term "minor" as used in the Act. The courts construing the three sections together have reached the conclusion, which can be considered as definitely settled, that the restrictions upon the allotted lands of minors, as defined by Section 2 were removed by Section 1 only upon condition that a sale thereof should be made by the Probate Court under Section 6; and that unless a sale is made through the Probate Court, Section 1 does not operate to remove the restrictions upon its alienation, and consequently an attempted alienation is void. It is not believed, however, that a similar construction is possible as to the inherited lands of minors under said Act. Sections 1 and 6 are expressly made to apply only to minor allottees, and the definition of the term "minor" is contained in a proviso to Section 2, which is also expressly limited in its application to allotted lands. The definition is further restricted to the term "minor as used in this Act." The term "minor" is nowhere used in Section 9, and it is very doubtful whether it is used anywhere in the Act to include minor heirs. It would, therefore, seem that all restrictions upon the alienation of the lands of minor heirs, that were in force at the time of the passage of the Act were, removed by Section 9, and that a conveyance by such minor heir is not void but subject only to the dis-



MINORS.

§ 212

**y of minority under the Oklahoma Law. A different
nsion has been reached by the Supreme Court of Okla-
in two recent decisions.³⁰**

**brewer v. Dodson, 159 Pac. 329; Crow v. Hardridge, 43 Okla.
143 Pac. 183.**

CHAPTER XXVI.

OIL AND GAS LEASE.

- § 213. Nature of Estate Created by Oil and Gas Lease.**
- 214. Oil and Gas Lease an Alienation.**
- 215. Oil and Gas Lease Subject to Approval of Secretary of Interior.**
- 216. Act of April 26, 1906.**
- 217. Act of May 27, 1908.**
- 218. Nature of Lease Contract Subject to Approval of Secretary of the Interior.**
- 219. Scope of Authority of Secretary of the Interior.**

LANDS OF MINORS.

- 220. Probate Jurisdiction of Courts Over Estates of Minors.**
- 221. Act of April 26, 1906.**
- 222. Under Probate Law of Oklahoma.**
- 223. Oil and Gas Lease, Personalty.**
- 224. Probate Rules.**
- 225. Authority of Guardian Without Approval of Court.**
- 226. Lease Extending Beyond Minority of Ward.**

§ 213. Nature of Estate Created by Oil and Gas Lease.
--Oil and gas in the earth, unlike coal, iron and similar substances, are fugacious and incapable of ownership distinct from the soil. A grant by lease, or deed, to the oil or gas in a specified tract of land, and of the right to occupy, and use so much of the surface of the land only as may be necessary to prospect for and remove the oil or gas, is not a grant of the oil and gas in the land but of a part thereof only as the grantee finds and reduces to possession. It vests no title in the lessee to any oil or gas which he does not extract and reduce to possession, and hence

title to any corporeal right or interest. It is simply a grant of the right to prospect for oil and gas, and constitutes an incorporeal hereditament.¹

And the estate of a lessee not in possession is insufficient to support an action in ejectment.²

§ 214. **Oil and Gas Lease An Alienation.**—An oil and gas lease constitutes an alienation within the meaning of the several agreements with the Five Civilized Tribes and the Act of May 27, 1908.³

And an assignment of the unearned royalties under a mineral lease, authorized under the several treaties and acts of Congress to be made upon restricted land upon the approval of the Secretary of the Interior, is an alienation within the meaning of said statutes, and void.⁴

An oil and gas lease, being an alienation within the meaning of the Acts imposing restrictions upon the alienation of the lands of the Five Civilized Tribes, is likewise comprehended within the purpose of the Acts removing such restrictions. The validity of an oil and gas lease, except as approved by the Secretary of the Interior in pursuance of statutory provisions authorizing such leases, is to be tested according to the same rules that apply to conveyances of the fee. If the land is subject to unrestricted con-

¹ *Etchen v. Cheney*, 235 Fed. (CCA) 104; *Priddy v. Thompson*, 204 Fed. (CCA) 955; *Kolachny v. Galbreath*, 26 Okla. 772, 110 Pac. 902; *Bank Oil Co. v. Bellview Oil & Gas Co.*, 29 Okla. 719, 119 Pac. 260; *St v. Signal Oil Co.*, 35 Okla. 172, 128 Pac. 694; *Duff v. Keaton*, Okla. 92, 124 Pac. 291; *Hill Oil & Gas Co. v. White*, 53 Okla. 748, 157 Pac. 710; *Davis v. Muffett*, 43 Okla. 771, 144 Pac. 607; *Ashcraft v. Moffett*, 44 Okla. 386, 144 Pac. 1041.

² *Priddy v. Thompson*, 204 Fed. (CCA) 955; *Hill Oil & Gas Co. v. White*, 53 Okla. 748, 157 Pac. 710.

³ *Riley v. Kelsey*, 218 Fed. (DC) 391; *Moore v. Sawyer*, 167 Fed. 826; *Sharp v. Lancaster*, 23 Okla. 349, 100 Pac. 578; *Barnes v. Lebraker*, 28 Okla. 75, 113 Pac. 903.

⁴ *United States v. Noble*, 237 U. S. 74, 59 L. Ed. 844; *Day v. Charl*, 160 Pac. 606.



§ 217

LANDS OF THE FIVE CIVILIZED TRIBES.

purposes. If executed in accordance with such provisions such leases were valid, otherwise void.⁶

§ 217. **Act of May 27, 1908.**—The Act of May 27, 1908 removed all restrictions upon the homestead and surplus allotments of allottees of less than half blood and upon the surplus of allottees of less than three-quarter blood. Section 2 of said Act enacted with reference to oil and gas leases upon the lands restricted under said Act as follows.

“Provided that leases of restricted land for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made with the approval of the Secretary of the Interior under rules and regulations provided by the Secretary of the Interior and not otherwise.”

By the same Section, the Secretary of the Interior was authorized to remove restrictions upon the homesteads of allottees who died, leaving issue born since March 4, 1909, which otherwise was, by said Act, rendered inalienable for the support of such issue. It has been held that the approval of an oil and gas lease upon such inherited homestead is a removal of restrictions without a separate action or removal upon the part of the Secretary of the Interior.

It has also been held that the authority granted the allottee under said Section 2, of leasing restricted land for oil and gas purposes upon the approval by the Secretary of the Interior, operated as a severance of the oil and gas rights from the surface and authorized the leasing of the land for oil and gas purposes, notwithstanding an agricultural lease be outstanding upon the same premises.⁸

⁶ United States v. Comet Oil Co., 187 Fed. (CC) 674; Allwright v. Shufflin, 32 Okla. 808, 124 Pac. 15.

⁷ Parker v. Riley, 243 Fed. (CCA) 42; Riley v. Kelsey, 218 Fed. (DC) 391.

⁸ Kemmerer v. Midland Oil & Drilling Co., 229 Fed. (CCA) 845; *Mallen v. Ruth Oil Co.*, 231 Fed. (CCA) 845.

and the lessee under such oil and gas lease is entitled to pay the surface to the extent necessary to develop the oil and gas in said land, to the exclusion of the lessee under an agricultural lease, although the latter was the first executed.⁹

218. Nature of Lease Contract Subject to Approval of Secretary of the Interior.—While the phraseology of the various enactments of Congress, authorizing the leasing of public lands subject to the approval of the Secretary of the Interior, differs somewhat, the vital requirement in all is the approval of the Secretary of the Interior. In every respect the legislation is in each instance the same, and it is believed that the legal principle involving the authority of the Secretary of the Interior with respect to such leases is identical. An oil and gas lease, which requires for its validity the approval of the Secretary of the Interior, is nevertheless essentially a contract between the lessor and lessee, to which the Secretary is not a party. It is a contract which both parties are competent to enter into, the consideration is valid, the subject matter legal, and there is a mutuality of obligations dependent merely upon the approval of the Secretary of the Interior for its validity. Such approval, when given, relates back and renders the contract binding upon both parties from its execution. The lease when executed creates an inchoate interest in the land, which upon approval by the Secretary of the Interior becomes absolute.¹⁰

It follows from the nature of the obligation that both the lessor and lessee are bound by the contract they have made, and the approval or disapproval of the Secretary of the Interior, and neither party may withdraw, without the con-

Hammer v. Midland Oil & Drilling Co., 229 Fed. (CCA) 872. *Winnings v. Wood*, 192 Fed. (CCA) 507; *Shulthis v. McDougal*, 192 Fed. (CCA) 529; *Crosble v. Brewer*, 158 Pac. 388, 173 Pac. 441; *Oil Co. v. Kelly*, 35 Okla. 525, 130 Pac. 931.

sent of the other, pending the action of the Secretary of the Interior.¹¹

Nor would the removal of the restrictions of the lease after execution and before action by the Secretary of the Interior, impair his authority to approve such lease, even in opposition to the wishes of the lessor.

Nor death of allottee.¹²

Upon approval, the contract is binding on both parties and the Secretary of the Interior, himself, has no authority thereafter, to amend or modify any of the terms or conditions of the lease contract.¹³

And it has been held that the provision of the Departmental lease which provided that it should not be assigned without the consent of the lessor, is valid and an assignment, in violation of such provision, is void.¹⁴

Even though the assignment be approved by the Secretary of the Interior.¹⁵

Nor would such assignment be rendered valid by a change in the rules and regulations, made, subsequent to the execution of the lease but prior to its approval, permitting assignments without the consent of the lessor.¹⁶

Although where the lease itself provides that it shall be subject to the rules and regulations of the Secretary of the Interior, any amendment or modification of such regulations after execution of the lease and before approval comes a part of the lease itself.¹⁷

§ 219. **Scope of Authority of the Secretary of the Interior.**—The authority of the Secretary of the Interior, in a

¹¹ *Crosbie v. Brewer*, 158 Pac. 388, 173 Pac. 441.

¹² *Scioto Oil Co. v. O'Hern*, 169 Pac. 483.

¹³ *Turner v. Seep*, 167 Fed. (CC) 646, 179 Fed. (CCA) 74.

¹⁴ *Scott v. Signal Oil Co.*, 35 Okla. 172, 128 Pac. 694.

¹⁵ *Turner v. Seep*, 167 Fed. (CC) 646, 179 Fed. (CCA) 74.

¹⁶ *Turner v. Seep*, *supra*.

¹⁷ *Dixon v. Owen*, 38 Okla. 85, 132 Pac. 351.

approving or disapproving oil and gas leases upon restricted lands, is only such as is conferred by the Acts of Congress and it is limited to the approval or disapproval of the lease contract that the parties themselves have made. He may suggest and advise but he cannot contract. His approval pre-supposes a valid contract, executed in all respects in accordance with law, between parties qualified to enter into such lease contract, except that it shall not be binding until it is approved by him. The rule is well stated in *Jennings v. Wood*, *infra* as follows:

"The jurisdiction of the Secretary of the Interior is only that expressed in the Acts of Congress. He was not constituted the general guardian of the estates of the Indians in the sense in which that term is usually employed. Power was not conferred on him to originate and make leases of allotted land. That was left to the Indians, subject to his approval in specified cases. If an Indian did not desire to lease there was nothing for the Secretary to act upon. If he did, and the lease was for oil and gas, its validity depended upon the approval of that official, but he was not one of the contracting parties. On the contrary, his connection with the transaction and his authority first arose after the minds of the contractors came together, and they must have been competent to make the contract submitted for approval. A disapproval was merely a veto. An approval, which proceeds upon a consideration of the terms of the instrument offered and whether they are reasonably for the interest of the Indian, was intended as an additional safeguard for his protection. It would not, however, reach back and supply or confirm all the essential legal pre-requisites of a valid contract."¹⁸

The functions of the Secretary of the Interior in approving or disapproving are in no manner judicial, and his action on the premises is not *res adjudicata* as to the legal sufficiency of the instrument, or of the contracting capacity of the par-

¹⁸ *Jennings v. Wood*, 192 Fed. (CCA) 507; *Turner v. Seep*, 167 Fed. 179 Fed. 74; *Crosbie v. Brewer*, 158 Pac. 388. 173 Pac. 441; *Walthis v. McDougal*, 170 Fed. (CCA) 529.

ties. His approval is merely the condition upon which oil and gas lease, otherwise sufficient, shall become binding upon the parties.¹⁹

The Assistant Secretary of the Interior is authorized to act in the name and in the stead of the Secretary him-

MINORS.

§ 220. **Probate Jurisdiction of Courts Over Estates of Minors.**—The Act of Congress of May 2, 1890, 26 Stat. L. 94, c. 182, extended over the Indian Territory the law of Arkansas relating to estates of deceased persons and minors, and provided that the courts of the Indian Territory should possess the powers of the courts of probate under the Arkansas law contained in Mansfield's Digest. Section 2 of the Act of April 28, 1904, enacted that:

“Full and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlements of estates of decedents, the guardianships of minors and of incompetents, whether Indian, freedmen or otherwise.

It has been seen that the Secretary of the Interior has not given general guardianship over the Indians by his provisions that his approval was necessary to the validity of mineral leases upon their land. His approval was a condition to the validity of such leases, but his power of approval was invoked only upon presentation of a lease executed in accordance with all legal requirements and binding upon the parties, except that it was subject to his approval. In the case of minors, not being capable of acting for themselves, the lease must have been duly and legally executed in their behalf by their duly appointed guardian. When prior to the Act of April 28, 1904, the probate laws of Arkansas applied to the estates of Indian minors, in the case of the Shawnee and Chickasaw Nations, they undoubtedly applied

¹⁹ Jennings v. Wood, *supra*.

²⁰ Turner v. Seep, 167 Fed. (CC) 646, 179 Fed. (CCA) 74.

in minors of the other nations, and were put in force in the nations by that Act. Under the Arkansas law, a lease of the land of a minor which has not been approved by the proper probate court, was void, and a like effect has been given to an oil and gas lease executed after the passage of said Act, by a guardian, without the sanction of the proper United States court in the Indian Territory, though it was duly approved by the Secretary of the Interior.²¹

The Act of March 3, 1905, 33 Stat. at L. 1060 c. 1479 specifically provided:

"No lease made by any administrator, executor, guardian or curator shall be valid or enforceable without the approval of the court having jurisdiction of the proceeding."

After the passage of said Act there can be no question that an oil and gas lease upon the lands of a minor allottee, unless made upon the order of the United States Court, was void, though approved by the Secretary of the Interior.²²

And it has been held that, although a lease of a minor's land executed prior to statehood, in order to be valid must have been approved by the United States Court, yet if the lease was authorized by the court a formal Act of confirmation after its execution was not necessary.²³

The United States were courts of superior jurisdiction; presumptions were in favor of the validity of their actions, and all irregularities in the exercise of their jurisdiction in probate proceedings were cured by final judgment and not subject to collateral attack.²⁴

221. Act of April 26, 1906.—Section 20 of the Act of

²¹ Robinson v. Long Gas Co., 221 Fed. (CCA) 398.

²² Morrison v. Burnette, 154 Fed. 617; Robinson v. Long Gas Co., Fed. (CCA) 398; Jennings v. Wood, 192 Fed. (CCA) 507.

²³ Cowles v. Lee, 35 Okla. 159, 128 Pac. 688; Spade v. Morton, 28 Okla. 384, 114 Pac. 724.

²⁴ Steele v. Kelley, 32 Okla. 547, 122 Pac. 934.

April 26, 1906, after authorizing the leasing of restricted lands subject to the approval of the Secretary of the Interior, adopted this proviso:

"Provided that allotments of minors and incompetents may be rented or leased under order of the proper court.

It has been repeatedly held by both the State and Federal Courts that this proviso excepted the lands of minors from the said provision and repealed the former Acts of Congress requiring the approval of the Secretary of the Interior of mineral leases upon the lands of minors, and substituted the probate court in his stead. In other words, after the passage of Section 20, mineral leases upon the lands of minors were valid, when authorized by the United States court of the Indian Territory sitting either in a chancery or probate without the approval of the Secretary of the Interior, regardless of whether the lands were restricted or unrestricted with respect to alienation. The reasoning of the courts is well expressed in *Morrison v. Burnette*, 154 Fed. 617, the first to announce the doctrine and the basis of the latter decision to the same effect.

"The regulation of the Interior Department is effective so far as it is sustained by the Acts of Congress, and is ineffectual so far as it is in conflict with them. In the light of the legislation to which reference has now been made there are two conclusive answers to the argument that the order awarding the sale and the lease to the appellants was not a final order. In the first place, the Acts of April 2, 1904, and April 26, 1906, conferred "full and complete jurisdiction" of the guardianship of minors, whether Indians, freedmen, or otherwise, and of the rental or lease of their allotments, upon the trial courts of the Indian Territory and the later act repealed all acts and parts of acts inconsistent therewith. The provision of the Act of June 30, 1906, that leases for mineral purposes might not be made without the approval of the Secretary of the Interior, is inconsistent with the grants of these later acts. There can be no full and complete jurisdiction of the guardianship of minor Indians and of the leasing of their allotments in a court which

gments are reviewable and reversible by an officer of another department of the government. Leases of allotments of Indian minors approved by the trial courts of the Indian Territory after April 26, 1906, were therefore not subject to approval or disapproval by the Secretary of the Interior.²⁵

Section 2 of the Act of May 27, 1908, which was a revisory Act and intended as a repeal of all former legislation, provided that leases of restricted land for oil and gas might be made, with the approval of the Secretary of the Interior under rules and regulations prescribed by him, and not otherwise, and it then adds:

“And further provided that the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provision,

It would thus seem that Congress deliberately reimposed the condition that leases for oil and gas upon the restricted lands of minors should be approved by the Secretary of the Interior, notwithstanding they may have been authorized by the probate courts of the State of Oklahoma. If such construction is correct, it follows that oil and gas leases upon the restricted lands of minors executed between the effective dates of the Act of April 26, 1906, and of May 27, 1908, were valid when made upon the order of the proper probate court, without the approval of the Secretary of the Interior, but that after the effective date of the Act of May 27, 1908, the approval of the Secretary of the Interior was necessary.

§ 222. **Under Probate Law of Oklahoma.**—Upon the admission of the State into the Union upon November 16, 1907, the laws of Oklahoma were extended over that part of the

²⁵ *Morrison v. Burnett*, 154 Fed. (CCA) 617; *Jennings v. Wood*, 12 Fed. (CCA) 507; *Robinson v. Long Gas Co.*, 221 Fed. (CCA) 398; *Bowles v. Lee*, 35 Okla. 159, 128 Pac. 688; *Wellsville Oil Co. v. Miller*, 44 Okla. 493, 145 Pac. 344.



§ 224

LANDS OF THE FIVE CIVILIZED TRIBES.

State which was formerly the Indian Territory, and after the persons and estates of minors of the Five Tribes were subject to the laws of Oklahoma, except conflict with the Acts of Congress, and to the jurisdiction of the probate courts of that State.

§ 223. **Oil and Gas Lease, Personalty.**—An oil lease is personalty, and is not a “conveyance of real estate” within the meaning of Section 3317, Revised Statutes of 1910. A guardian is not authorized to grant an oil lease upon the lands of his ward without the approval of the proper probate court, but a compliance with the procedure prescribed by the statutes for the sale of the real estate of a minor is not necessary to its validity. The statutes prescribe no mode of procedure for the approval of said lease by the court, but requires the approval of the court for its validity.

§ 224. **Probate Rules.**—In order to unify the procedure of the several probate courts in those particulars where the statutes failed to prescribe the procedure to be followed, the members of the Supreme Court of the State, on the first day of June, 1914, acting under authority of Section 3317 of the Revised Statutes of 1910, promulgated 18 rules to be followed by the probate courts in guardianship matters, known as the Probate Rules. Those rules became effective on the fifteenth day of July, 1914. Among them are rules providing that the leases of the lands of minors for oil and gas purposes shall be made only at public sale in open court and with public notice. The Supreme Court has held that it has the authority to promulgate such rules, and that they are binding upon the probate courts of the State. A writ of mandamus issued by the supreme court requiring the probate court of one of the counties of the eastern part of the State to follow such rules, and there is little question

²⁰ Duff v. Keaton, 33 Okla. 92, 124 Pac. 291; Cabin Valley Co. v. Hall, 53 Okla. 760, 155 Pac. 570; Bailey v. King, 157

Territory court will hold that such rules have the force of the Federal statutory enactment, when that question shall squarely be before them.²⁷

§ 225. Authority of Guardian Without Court.—It is well settled that a guardian under the Oklahoma Statutes without the authority of the probate court has no power to lease the lands of his ward for any purposes, and that such lease is void.²⁸

The authority of the guardian arising only at the approval of the court, the guardian after the approval by the court cannot change or modify it without an order of the court, nor can he waive the provisions nor bind the estate of the ward by a lease of said lands in his own quietness.²⁹

§ 226. Lease Extending Beyond Minority. Under the Arkansas law prior to statehood the guardian under authority of the probate court, had no power to lease the lands of his ward for oil and gas purposes extending beyond the minority of the ward, and the guardian under the Oklahoma law had no authority.³⁰

State v. Kight, 152 Pac. 362.

Duff v. Keaton, 33 Okla. 92, 124 Pac. 291; *Bank of Oklahoma v. Archer*, 52 Okla. 190, 152 Pac. 844; *Ardizzone v. Archer*, 160 Pac. 446.

Cowles v. Lee, 35 Okla. 159, 128 Pac. 688.

Cabin Valley Mining Co. v. Hall, 53 Okla. 760, 152 Pac. 104; *Mallen v. Ruess*, 53 Okla. 845.

Cabin Valley
King. 152

CHAPTER XXVII.

AGRICULTURAL LEASES.

- § 227. Scope of Chapter.
- 228. Lease An Alienation.
- 229. Lease of Restricted Land Authorized by Section Two.
- 230. Lease of Minor's Restricted Land.
- 231. Statute of Frauds.
- 232. Overlapping Leases Void.
- 233. Lease for Longer Term by Secretary of the Interior.

§ 227. **Scope of Chapter.**—It will be necessary to discuss only leases executed after and under the Act of May 27, 1908, as leases executed prior to that time have long since expired. The Act of May 27, 1908, was a revisory one and repealed former legislation upon the subject of leasing of allot land.¹

§ 228. **Lease An Alienation.**—Section 1 of the said Act removed all restrictions of whatsoever nature upon the allotted land, including both homestead and surplus, of Indians, married whites, freedmen and mixed blood Indians having less than one-half Indian blood, including minors of the above classes; and upon the surplus allotment of mixed blood Indians having less than three-quarters blood Indian blood. As to the above mentioned classes, all restrictions upon alienation of the land of whatever nature were removed, including the right to lease, and such allottees are authorized with respect to their unrestricted land, to enter into any contract that any other person may lawfully execute.²

The homestead allotments of allottees enrolled as mixed blood Indians having one-half or more than half Indian

¹ Bailey v. King, 157 Pac. 763; Boxley v. Scott, 162 Pac. 688; Cooper v. Chapman, 170 Pac. 259.

² Bailey v. King, 157 Pac. 763; Bettes v. Brower, 184 Fed. 342; Moore v. Sawyer, 167 Fed. (CC) 826.

l, and the surplus allotments of mixed bloods of three-
ters or more Indian blood were, by said Act, restricted
April 26, 1931, against alienation, contract to sell, power
ttorney or any other incumbrance. A lease is a species
ienation or incumbrance within the meaning of such re-
tion, and prohibited by said Section.³

229. Lease of Restricted Land Authorized by Section 2.
ction 2 of said Act provides for the leasing of restricted
as follows:

That all lands other than homesteads allotted to members
e Five Civilized Tribes from which restrictions have not
removed may be leased by the allottee if an adult, or by
dian or curator under order of the proper probate court
minor or incompetent, for a period not to exceed five
s, without the privilege of renewal: Provided, that leases
stricted lands for oil, gas or other mining purposes, leases
stricted homesteads for more than one year, and leases
stricted lands for periods of more than five years, may be
e, with the approval of the Secretary of the Interior, un-
rules and regulations provided by the Secretary of the
rior, and not otherwise."

nder said Section a lease is permitted by an adult allottee
n the restricted surplus for the term of five years and
n the restricted homestead for a period not to exceed one
: without the privilege of renewal. Leases for long pe-
s are absolutely void.⁴

230. Lease of Minor's Restricted Land.—Section 2
orizes the leasing of the restricted land of minors or in-
etents for the same period as adults when entered into
guardian or curator under order of the proper probate
. Under the statutes of Oklahoma a guardian may lease
ands of his ward during the minority of the ward with-
n order of approval by the county court.⁵

red v. Okmulgee Loan & Trust Co., 22 Okla. 742, 98 Pac. 929;

v. Simpson, 34 Okla. 129, 124 Pac. 754.

ple v. Westheimer & Daube, 55 Okla. 532, 155 Pac. 623.

ttes v. Brower, 184 Fed. (DC) 342.

But such section specifically provides that land of minors or incompetents could be leased, only under the order of probate court, and as such lands were undoubtedly restricted against leases as well as other forms of alienation, except the permission given in Section 2, it seems to follow that such lands could be leased by the guardian only upon the order of proper probate court.

§ 231. **Statute of Frauds.**—It will be observed that there is no requirement in Section 2 that the leases for one and two years respectively upon restricted land should be in writing. Section 941 of the Revised Statutes of 1910 of the State of Oklahoma, however, provides that leases for more than one year not evidenced by written memorandum shall be null and void. It follows, therefore, that, under the said statute, a lease for a longer period than one year must be in writing to be valid. It has been held, however, that under Section 2 a lease for one year to begin in the future need not be in writing.⁶

§ 232. **Overlapping Leases Void.**—Section 2 contains a prohibition against the leasing of restricted land for a term to commence in the future, provided the term of the lease itself did not exceed the period of one year upon the homestead and five years upon the surplus, and it was formerly held that such leases were valid.⁷

But later cases have overruled the former holdings on this point and it is now established that leases executed during the existence of a prior valid lease, to commence at the expiration of the former lease, are void, except that made for a fair rental near the expiration of the former

⁶ Longmeyer v. Jones, 51 Okla. 474, 151 Pac. 864.

⁷ Williams v. Williams, 22 Okla. 672, 98 Pac. 909; Whitham v. Mer, 22 Okla. 627, 98 Pac. 351; Sullivan v. Bryant, 40 Okla. 81 Pac. 412; Darnell v. Hume, 40 Okla. 668, 140 Pac. 775; Scheel Hulquist, 39 Okla. 434, 130 Pac. 544; Gladney v. Richardson, 44 Okla. 104, 143 Pac. 683.

and that it does not extend the term beyond the time fixed by law from the date of the new lease.⁸

The time with respect to the termination of the former lease within which a new lease may be taken, is governed by the course of cultivation designed for the land for the next year, although the exact date has not been judicially determined. The rule was thus announced in *Brown v. Van Pelt*, 166 Pac. 102:

The time in which a new lease may be made depends upon many different circumstances; such as the course of cultivation that was to be pursued the next year. In the sections of the State where wheat is the principal crop it would be necessary to make arrangements earlier than where corn or cotton are the principal crops.⁹

A year prior to the termination of the former lease has been held too early.¹⁰

Overlapping leases, being void in their inception, are not valid for the term beginning at the expiration of the former lease and extending five years from the date of their execution. And purchasers, or subsequent lessees, are not estopped from the possession of the lessee under such void lease to set up its invalidity.¹¹

233. Lease for Longer Term by Secretary of the Interior.

By express provision of Section 2, leases on restricted lands for more than one year and leases on restricted lands for more than five years, may be made with the approval of the Secretary of the Interior under such rules and regulations as he may prescribe.

United States v. Noble, 237 U. S. 74, 59 L. Ed. 844; *Hudson v. Noble*, 51 Okla. 359, 151 Pac. 1063; *Apple v. Pierce*, 155 Pac. 537; *Apple v. Westheimer & Daube*, 55 Pac. 532, 155 Pac. 623; *Reirdon v. Apple*, 161 Pac. 798; *Brown v. Van Pelt*, 166 Pac. 102; *Mullen v. Apple*, 166 Pac. 742; *Mullen v. Carter*, 169 Pac. 867, 173 Pac. 512; *Apple v. Nanger*, 174 Pac. 234.

Mullen v. Short, 38 Okla. 333, 133 Pac. 230; *Hudson v. Hildt*, 151 Okla. 359, 151 Pac. 1063; *Mullen v. Carter*, 173 Pac. 512.

Brown v. Van Pelt, 166 Pac. 102.

Apple v. Westheimer & Daube, 55 Okla. 532, 155 Pac. 623.

CHAPTER XXVIII.

DESCENT AND DISTRIBUTION.

- § 234. Establishment of United States Court in the Indian Territory.
- 235. Jurisdiction of United States Court.
- 236. Tribal Laws.
- 237. Extension of Arkansas Law to Members of the Tribes.
- 238. Choctaws and Chickasaws Not Affected by Said Acts.
- 239. Act of April 28, 1904.
- 240. Estate of Inheritance.
- 241. Seminoles.
- 242. Who Is "Citizen" Within Section Two of Act of June 2, 1906.
- 243. Oklahoma Law of Descent and Distribution Extended to Members of All Tribes Upon Admission of State.
- 244. Law of Descent Determined by Date of Selection.

§ 234. **Establishment of United States Court in the Indian Territory.**—The Five Civilized Tribes were self-governed communities and though situated within the territorial limits of the United States, they were not subject to the laws of the United States or to the jurisdiction of its courts. They had written constitutions and laws, largely formulated in imitation of those of the several States of the Union. By the Act of March 1, 1889, the first court within the jurisdiction of the United States was established in Indian Territory. It held its session at Muskogee.

By the Act of May 2, 1890, the Indian Territory was, for judicial purposes, divided into divisions known as the First, Second and Third. The first consisted of the territory occupied by the Indian tribes in the Quapaw Indian Agency and all that part of the Cherokee country east of the ninth sixth meridian, and the Creek country. The second division consisted of the Choctaw Nation, and the third of the Chickasaw and Seminole Nations. A court was established in each one of the districts thus created. By the Act

ch 1, 1895, the divisions were abolished and the Indian Territory divided into three judicial districts, Northern, Central and Southern, with provision for holding court in several towns in each district. The Northern district comprised the Creek, Seminole and Cherokee Nations and the Sapaw Indian Agency and the townsite of the Miami Townsite Company. The Central district comprised the Osage Nation, and the Southern district the Chickasaw Nation. By Section 1 of the Act of March 24, 1902, part of the Chickasaw Nation was taken from the Southern district and added to the Central district. By the Act of May 1902, the Western district was established comprising the Creek, Seminole and parts of the Cherokee and Choctaw Nations.¹

§ 235. Jurisdiction of United States Courts.—The jurisdiction of the United States Court established by the Act of March 1, 1889, in criminal cases, extended to all offenses punishable by death or imprisonment at hard labor. By Section 6 it was given jurisdiction, "in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or territory therein, and any citizen or person or persons residing or found in the Indian Territory ; . . . provided, that nothing herein contained shall be construed as to give the court jurisdiction over controversies between persons of Indian blood only." Section 30 of the Act of May 2, 1890, which extended in force in the Indian Territory certain laws of the State of Arkansas contained the proviso:

"Provided, however, that the judicial tribunals of the Indian Nations shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the Nation by nativity or by adoption shall be the only parties involved as to all such cases the laws of the State of Arkansas extended over and put in force in said Indian Territory by this Act shall not apply."

¹Robinson v. Long Gas Co., 221 Fed. (CCA) 398.

It is clear that the courts of the several nations retain exclusive jurisdiction of controversies where members of the nation by nativity or adoption were the only parties and that such cases were not subject to the jurisdiction of the United States court. It is equally clear that the United States courts had jurisdiction of controversy where one of the parties was not a member of the nation.²

§ 236. **Tribal Laws.**—Congress, by Section 31 of the Act of May 2, 1890, extended over and put in force in the Indian Territory certain laws of the State of Arkansas contained in Mansfield's Digest of the statutes of that State published in 1884 which were not locally inapplicable. Of the chapters thus adopted were those upon Administration of Common and Statute Law of England, Descent and Distribution, Divorce, Dower, Guardians, Curators and Trustees, Marriage, Wills and Testaments. The courts in the Indian Territory were given the authority of the probate courts of the State of Arkansas and specifically authorized to appoint guardians and to administer upon estates of decedents. It was provided: "And whenever in said Indian Territory the courts of record of said State are merged in the said court in the Indian Territory shall be substituted therefor."

But it was specifically enacted that the jurisdiction of the United States courts should not extend to civil or criminal cases in which members of the nations by nativity or adoption should be the only party:

"And as to all such cases the laws of the State of Arkansas extended over and put in force in said Indian Territory by this Act, shall not apply."

And there is no question that prior to January 1, 1890, when the Act of June 7, 1897, became effective, the members of the Five Civilized Tribes were not amenable to the laws thus put in force in the Indian Territory, but

² *Crowell v. Young*, 4 Ind. Ter. 148, 69 S. W. 329.

ject to the laws of the tribe to which they belonged and be tried in the courts of the nation for the infraction of criminal laws, and were entitled to have their rights, when the other parties were likewise members of the tribe, adjudicated in its courts.³

237. **Extension of Arkansas Law to Members of the** bes.—The Act of June 7, 1897, provided:

"That on and after January 1, 1898, the United States courts in said territory shall have original and exclusive jurisdiction and authority to try and determine all civil causes in and equity thereafter instituted and all criminal causes the punishment of any offense committed after January 1898, by any person in said territory, and the United States commissioners in said territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said territory; and the laws of the United States the State of Arkansas in force in the territory shall apply to all persons therein, irrespective of race, said courts exercising jurisdiction thereof as now conferred upon them in the case of like causes; and any citizen of any one of said Tribes likewise qualified who can speak and understand the English language may serve as a juror in any of said courts."

and Congress, on June 28, 1898, in what is known as the *Washita* Act, provided as follows:

Section 26. "That on and after the passage of this act the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory."

Section 28. "That on the first day of July, 1898, all tribal courts in the Indian Territory shall be abolished, and no official of said courts shall thereafter have any authority whatsoever to do or perform any act theretofore authorized by any in connection with said courts, or to receive any pay for

Washington v. Miller, 235 U. S. 422, 59 L. Ed. 295; *Woodward v. Craffenreid*, 238 U. S. 284, 59 L. Ed. 1310; *Armstrong v. Wood*, 100 Fed. (CC) 137; *Crowell v. Young*, 4 Ind. Ter. 148, 69 S. W. 829; *Poff's Guardianship*, 7 Ind. Ter. 59, 103 S. W. 765.

same; . . . Provided, that this section shall not be in force as to the Chickasaw, Choctaw and Creek Tribes or Nations until the first day of October, 1898."

The effect of the two acts upon the Cherokees, Creek and Seminoles undoubtedly was to abolish the tribal courts and to supercede the tribal law, and to extend the laws of the United States and of the State of Arkansas in force in the Indian Territory over the persons and estates of the members of those tribes and to make them subject to the jurisdiction of the United States court in the Indian Territory.

§ 238. **Choctaw and Chickasaws Not Affected By Said Acts.**—It is not so plain, however, in the case of the Choctaws and Chickasaws. The Act of June 28, 1898, submitted for ratification by the respective tribes, agreements with the Creeks and with the Choctaws and Chickasaws looking to the allotment of their lands in severalty. Both agreements contained provisions that in the event of the ratification of the treaty by the tribe, such Act should not be effective where inconsistent with the terms of the agreement. The agreement submitted to the Creeks was rejected by the tribe and consequently the terms of the Curtis Act became effective on October 1, 1898. The agreement submitted to the Choctaws and Chickasaws was ratified by those tribes and became known as the Atoka Agreement. The Atoka Agreement provided:

* Adkins v. Arnold, 235 U. S. 417, 59 L. Ed. 294; Perryman v. Woodward, 238 U. S. 148, 59 L. Ed. 1242; Washington v. Miller, 235 U. S. 422, 59 L. Ed. 295; Woodward v. De Graffenreid, 238 U. S. 284, 59 L. Ed. 1310; Armstrong v. Wood, 195 Fed. (CC) 137; Bartlett v. Okla. Oil Co., 218 Fed. (DC) 380; Robb v. George, 4 Ind. Ter. 61, 64 S. W. 615; Heliker-Jarvis Seminole Co. v. Lincoln, 33 Okla. 425, 126 Pac. 723; Thorne v. Cone, 47 Okla. 781, 150 Pac. 701; Cook v. Childs, 49 Okla. 321, 152 Pac. 88, 45 Okla. 277, 145 Pac. 406; Pierce v. Ellis, 51 Okla. 710, 152 Pac. 340; Butler v. Willson, 54 Okla. 229, 153 Pac. 823; Jefferson v. Cook, 53 Okla. 272, 155 Pac. 852; Johnson v. Simpson, 40 Okla. 413, 139 Pac. 129; Nevins v. Nevins, 4 Ind. Ter. 30, 6 S. W. 604.

And if said agreement as amended be so ratified the provisions of this Act (Curtis Act) shall then only apply to said estates where the same do not conflict with the provisions of agreement."

There are undoubtedly certain provisions of the Atoka Agreement which authorized the continuance of the legislative bodies of the Choctaws and Chickasaws and recognized the force of their laws and the jurisdiction of their courts. And it would seem that those provisions of the Act of June 28, 1898, abolishing the courts and extending the laws of Arkansas to include the persons and estates of members of those tribes, were inconsistent with these provisions of the Atoka Agreement and not effective as to them. That the Commission which had in charge the allotment of the lands of the Choctaws and Chickasaws adopted this construction, is apparent from its sixth annual report, where it uses this language:

"The Choctaw and Chickasaw governments, in a limited form, are continued, by agreement, to March 4, 1906, and certain of their laws are therefore effective within the territory of those tribes."

And there are numerous decisions which hold that the laws of the Choctaws and Chickasaws, with respect to descent and distribution and kindred subjects, were in force in those nations after the passage of the Curtis Act, and that the tribal courts were vested with probate jurisdiction until the passage of the Act of April 28, 1904.⁵

On the other hand, the language of the Supreme Court in *United States v. Miller and Woodl v. De Graffenreid* is broad enough to include the Choctaws and Chickasaws, although the decisions involved

Holbert v. Fulton, 157 Pac. 1151; *Hayes v. Barringer*, 168 Fed. App. 221, 7 Ind. Ter. 697, 104 S. W. 937; *Elliott v. Garvin*, 166 Fed. App. 278; *In re Poff's Guardianship*, 7 Ind. Ter. 59, 103 S. W. 765; *Wall v. Young*, 4 Ind. Ter. 148, 69 S. W. 829; *Robb v. George*, 4 Ind. Ter. 61, 64 S. W. 615; *Taylor v. Parker*, 33 Okla. 199, 126 Pac. 303; *Zimmerman v. Holmes*, 159 Pac. 303.

only the Creeks. And the Supreme Court of Oklahoma in *Cook v. Childs*, 152 Pac. 88 and *Pierce v. Ellis*, 152 Pac. 101 has held the Act of June 28, 1898, operative as to the Chickasaws equally with the other tribes. In neither of said cases, however, were the earlier decisions of the federal court and the Indian Territory Court appealed holding to the contrary noticed or discussed. The decision in the first case is based upon *Heliker-Jarvis v. Inole Company v. Lincoln* and *Johnson v. Simpson* Seminole cases, and *Armstrong v. Wood*, a Creek case. In *Pierce v. Ellis*, the last two cases only are cited to sustain the holding of the court.

§ 239. **Act of April 28, 1904.**—On April 28, 1904, Congress enacted as follows:

“All the laws of Arkansas heretofore put in force in Indian Territory are hereby continued and extended in operation, so as to embrace all persons and estates in said territory, whether Indian, freedmen, or otherwise, and complete jurisdiction is hereby conferred upon the district courts in said territory in the settlement of all cases of decedents, the guardianships of minors and incompetents, whether Indians, freedmen, or otherwise.”

Whatever may have been the case before that time in the case of the Choctaws and Chickasaws, there can be no doubt that thereafter the laws of Arkansas extended to the Indian Territory by the Act of May 2, 1890, except as modified by the terms of the agreements in the case of the Creeks and Seminoles, were in force as to the persons and estates of all members of the Five Civilized Tribes in Indian Territory, and the United States courts had full and complete jurisdiction over them until statehood.⁶

§ 240. **Estate of Inheritance.**—Section 2531, Mar-

⁶ *Pigeon v. Buck*, 237 U. S. 386, 59 L. Ed. 1007; *Taylor v. Taylor*, 235 U. S. 42, 59 L. E. 121; *Bartlett v. Oklahoma Oil Co.*, 218 F. 380; *Bruner v. Sanders*, 26 Okla. 673, 110 Pac. 730; *Labadie v. Labadie*, 41 Okla. 773, 140 Pac. 427.

est (Section 1829, Ind. Ter. Stat.) provided for the descent, in case of the death of the intestate without descendants, as follows:

In cases where the intestate shall die without decedants, the estate come by the father, then it shall ascend to the mother and his heirs; if by the mother, the estate, or so much thereof as came by the mother, shall ascend to the mother and her heirs; but if the estate be a new acquisition it shall descend to the father for his lifetime, and then descend, in remainder, to the collateral kindred of the intestate in the manner provided in this act; and, in default of a father, then to the mother, for her life-time; then to descend to the collateral heirs as before provided."

It will thus be seen that the property of the intestate for the purpose of the descent and distribution, in the absence of descendants, was divided into two classes and a different line of descent provided for each; that which he acquired by inheritance and that which he accumulated by his own efforts. The first was an estate of inheritance, the second a new acquisition. The question arose whether the lands of a member of the Five Civilized Tribes, which he received upon allotment by reason of his membership in the tribe, was an ancestral estate or a new acquisition. Strictly speaking, the estate of such allottee did not fit into either of the classes into which estates were divided by the Arkansas law, and there was for years a strong diversion of opinion upon the subject. It is now definitely settled, however, that it is an estate of inheritance and not a new acquisition.'

McGeon v. Buck, 237 U. S. 386, 59 L. Ed. 1007; *McDougal v. McGeon*, 237 U. S. 372, 59 L. Ed. 1001; *Shulthis v. McDougal*, 170 Fed. App. 529; *McDougal v. McKay*, 43 Okla. 261, 142 Pac. 987; *Lovett v. McGeon*, 44 Okla. 511, 145 Pac. 334; *Gillum v. Anglin*, 44 Okla. 684, 145 Pac. 1145; *Sims v. Brown*, 46 Okla. 767, 149 Pac. 876; *Thorn v. Brown*, 47 Okla. 781, 150 Pac. 701; *Finlay v. American Trust Co.*, 48 Okla. 489, 151 Pac. 885; *Hill v. Hill*, 160 Pac. 1116; *Cowokochee v. Chapman*, 171 Pac. 50; *Roberts v. Underwood*, 38 Okla. 376, 132 Pac. 673; *Finley v. Thompson*, 174 Pac. 535.

The statute provided that when the estate came by the father it should ascend to the father and his heirs; and when it came by the mother it should ascend to the mother and her heirs. Prior to the allotment, the members of the tribe had no interest in the land of the tribe except the right of occupancy. Allotments were made to the members of the tribes who secured their membership through the tribal blood of their parents. It is, therefore, considered that the lands, received upon allotment, came by virtue of the tribal blood transmitted by the parents, and when both parents were citizens of the tribe by blood, it came from them both, and upon the death of allottee without descendants ascended to them equally. If the blood of the tribe was received from only one parent, he takes the entire estate to the exclusion of the other parent.⁸

And it has been held that the last proposition is true, though the non-blood parent was a member of the tribe by intermarriage or adoption and entitled, under the constitution and laws of the tribe, to all the rights and privileges of a member by blood.⁹

§ 241. **Seminole.**—Section 2 of the Act of Congress approved June 2, 1900, provides:

"If any member of the Seminole Tribe of Indians shall die after the 31st day of December, 1899, the lands, money, and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly: Provided, that in all cases where such property would descend to the parents under said laws the same shall first go to the

⁸ McDougal v. McKay, 237 U. S. 372, 59 L. Ed. 1001; Shulthis v. McDougal, 170 Fed. (CCA) 529; Gillum v. Anglin, 44 Okla. 684, 144 Pac. 1145; Thorne v. Cone, 47 Okla. 781, 150 Pac. 701; Finley v. American Trust Co., 51 Okla. 489, 151 Pac. 865; Cowokochee v. Chapman, 171 Pac. 50; Buck v. Simpson, 166 Pac. 146; Johnson v. Dunlap, 173 Pac. 359; Finley v. Thompson, 174 Pac. 535.

⁹ Stalcup v. Mullen, 49 Okla. 543, 153 Pac. 868; Gillum v. Anglin, 44 Okla. 684, 144 Pac. 1145.

her instead of the father, and then to the brothers and heirs, and their heirs, instead of the father."

This section is not intended as a general statute of descent and distribution, but a special one, applicable only to property of enrolled members who died subsequent to 31st day of December, 1899, without having made selection of the land, or having received the money or other property, to which they were entitled by reason of their membership in the tribe.¹⁰

The lands of all Seminole citizens who received their allotments prior to their death and who died before November 16, 1907, descended to their heirs according to the Arkansas law of descent and distribution without qualification or condition of any kind.¹¹

§ 242. **Who Is "Citizen" Within Section Two of Act of June 2, 1900.**—Section Two above quoted provides that on the death of one entitled to allotment prior to selection, the lands, monies and other property to which he would be entitled if living, "shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas." The Seminoles, like all tribal peoples, traced their tribal relationship through the maternal line, the child becoming a member of the tribe of his mother regardless of the tribe of the father. The Commission to the Five Civilized Tribes in recognition of such custom of the several tribes, enrolled the child whose father was a Seminole but whose mother was not, who was a member of one of the other tribes, in the name of the mother. In determining whether the children were not thus enrolled as Seminoles, though they were

Bartlett v. Oklahoma Oil Co., 218 Fed. (DC) 380; *Wadsworth v. Simpson*, 53 Okla. 728, 154 Pac. 60, 157 Pac. 713; *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okla. 425, 126 Pac. 723; *Bruner v. Sanders*, 26 Okla. 673, 110 Pac. 730.

Thorn v. Cone, 47 Okla. 781, 150 Pac. 701; *Johnson v. Simpson*, 26 Okla. 413, 139 Pac. 129; *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okla. 425, 126 Pac. 723; *Bruner v. Sanders*, 26 Okla. 673, 110 Pac.

of the blood of the tribe on the father's side, could inherit from the paternal line, the word "citizen" is limited to persons whose names appear upon the Seminole rolls.¹²

§ 243. **Oklahoma Law of Descent and Distribution Extended Over Members of All Tribes Upon Admission State.**—In the Oklahoma Enabling Act (Act of June 1906), it was provided by Section 13:

"That the laws in force in the Territory of Oklahoma far as applicable, shall extend over and apply to said State until changed by the Legislature thereof."

And by Section 21:

"All laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State except as modified or changed by Act or by the Constitution of the State."

Oklahoma was admitted into the Union on November 1907, and from that date the persons and estates of members of the Five Civilized Tribes were subject to the laws of the State except in respect to which Congress otherwise specifically provided, and to the probate and other jurisdiction of its courts.¹³

§ 244. **Law of Descent Determined By Date of Admission.**—Prior to the segregation by selection of allotment

¹² *Thorn v. Cone*, 47 Okla. 781, 150 Pac. 701; *Wadsworth Crump*, 53 Okla. 728, 154 Pac. 60, 157 Pac. 713; *Campbell v. Worth, et al.*, decided by the Supreme Court of the United States December 16, 1918, not yet officially reported, overruling.

¹³ *Jefferson v. Fink*, — U. S. —, 62 L. Ed. 654; *Bartlett v. Okla. Oil Co.*, 218 Fed. (DC) 380; *Riley v. Kelsey*, 218 Fed. (DC) 391; *Templeman v. Bruner*, 42 Okla. 6, 138 Pac. 152; *Jefferson v. Cook*, 53 Okla. 272, 155 Pac. 852; *Thompson v. Cornelius*, 53 Okla. 85, 155 Pac. 602; *Hughes v. Bell*, 55 Okla. 555, 155 Pac. 605; *Chambliss v. Welch*, 53 Okla. 288, 156 Pac. 302; *Aldridge v. Whitson*, 156 Pac. 667; *Van Buskirk v. Grisso*, 157 Pac. 307; *McDonald v. Whitson*, 166 Pac. 405.

quot part that each member of the Five Civilized was entitled to by reason of his membership in the he had no interest in the common lands of the tribe as subject to sale or devise, or upon which the law of t and distribution in force at the time of his death operate. He has merely the right, under the laws eaties of his tribe, to select his allotment of lands durs life time, or to have the selection made for him after ath by his heirs or administrator. Upon the selection : allotment, either before or after his death, his inter- became inheritable and descended to his heirs. In the of his death before selection, however, the descent was under the law in force at the time of the selection and t the time of his death.¹⁴

applying the law of descent and distribution in effect e time of the selection, however, that law is applied to situation that existed at the date of the death of the tee. The rule is thus expressed in the case of *Shellen- er v. Fewell*, 124 Pac. 617:

The law of descent in force at the date the selection of the ment takes place governs as to the classification of the ; and this law relates back to the death of the Indian led to the allotment and identifies the heirs as of that in either event you take the governing law scent and carry it back to the date of the death of the n entitled to take the allotment and identify the heirs eh Indian under such law of descent as of the date of death.¹⁵

Sizemore v. Brady, 235 U. S. 441, 59 L. Ed. 308; *Woodward v. Offenreid*, 238 U. S. 284, 59 L. Ed. 1310; *Reynolds v. Fewel*, 236 U. S. 68, 59 L. Ed. 465; *Shallenbarger v. Fewel*, 236 U. S. 68, 59 L. Ed. 465; *McKee v. Henry*, 201 Fed. (CCA) 74; *Bruner v. Nordmeyer*, 100 Okla. 126; *Brady v. Sizemore*, 33 Okla. 169, 124 Pac. 615; *Hooks v. Ward*, 28 Okla. 457, 114 Pac. 744; *McDonald v. Ralston*, 166 Okla. 405; *Barnett v. Way*, 29 Okla. 780, 119 Pac. 418; *Jesse v. Man*, 173 Pac. 1044. *Barnett v. Way*, 29 Okla. 780, 119 Pac. 418; *Brady v. Sizemore*, 33 Okla. 169, 124 Pac. 615; *Morley v. Fewel*, 32 Okla. 452, 122 Pac. 1078; *Ground v. Dingman*, 33 Okla. 760, 127 Pac. 1078.

CHAPTER XXIX.

DESCENT AND DISTRIBUTION—CREEK.

- § 245. Scope of Chapter.
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- 257. Provisos Not Repealed by Act of April 28, 1904.
- 258. Oklahoma Law of Descent Effective Upon Admission State.
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§ 245. **Scope of Chapter.**—What has been said in last Chapter is applicable in most instances to the Creeks as well as to the others of the Five Civilized Tribes on account of provisions of the Creek Agreements, with reference to descent and distribution, however, which are different from the others, it will be necessary to discuss the law upon that subject separately.

§ 246. **Allotments Under Curtis Act.**—Upon the ratification by the Creeks of the treaty submitted for their ratification by the Curtis Act (Act of June 28, 1898), the mission proceeded with the allotment of the lands of each tribe under Section 11 of such Act and for that purpose opened an office in Muskogee on April 1, 1899. By March 1, 1901, the effective date of the Original Creek Agreement, the larger part of the lands of said nation had been put in allotment. Section 6 of the original agreement re-

action of the Commission and provided that the allotment so made should in all things be considered as having been made under the provisions of that treaty. The Arkansas law of descent and distribution was effective in the Creek Nation during all the time between the opening of the office of the Commission on April 1, 1899, and the adoption of the original agreement, which substituted the Creek law of descent and distribution, having been extended over that nation by the Act of June 28, 1898. It is, however, well settled that the lands of one who selected his allotment under Section 11 of the Curtis Act and died before the adoption of the Original Agreement, descended to his heirs, not according to the Arkansas law, but according to the Creek law of descent and distribution. It is held that an allotment under the Curtis Act did not constitute a grant of the fee of the land, but only of a provisional right of occupancy of the surface, which interest was not inheritable; that such right of occupancy was converted into an estate in fee, which was capable of descent to the heirs, only by Section 6 of the Original Agreement, and that the law of descent and distribution put in force by that agreement, controlled the descent.¹

And the same result follows in the case of one who was living on April 1, 1899, and entitled to an allotment, but who died prior to the adoption of the Original Agreement and whose allotment was selected for him after his death, after the adoption of the Original Agreement and prior to the adoption of the Supplemental Agreement.²

Woodward v. Graffenreid, 238 U. S. 284, 59 L. Ed. 1310; **Sanders v. Sanders**, 28 Okla. 59, 117 Pac. 338; **Barnett v. Way**, 29 Okla. 119 Pac. 418; **Divine v. Harmon**, 30 Okla. 820, 121 Pac. 219; **My v. Sizemore**, 33 Okla. 169, 124 Pac. 615; **Reynolds v. Fewell**, U. S. 58, 59 L. Ed. 465, 34 Okla. 112, 124 Pac. 623; **Bilby v. Town**, 34 Okla. 738, 126 Pac. 1024; **Warner v. Grayson**, 46 Okla. 149 Pac. 235; **Bigpond v. Peoples' Banking & Trust Co.**, 52 Okla. 151 Pac. 849; **Woodward v. De Graffenreid**, 36 Okla. 41, 131 Pac. 700; **Morley v. Fewell**, 32 Okla. 452, 122 Pac. 700; **Ott v. Jacobs**, 40 Okla. 522, 140 Pac. 148; **Ground v. Ding**, 33 Okla. 760, 127 Pac. 1078.

§ 247. **Original Creek Agreement.**—The Original Creek Agreement was ratified and became effective on May 25, 1901.³

Part of Section 7 of the Original Agreement is as follows:

"The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will free from limitation herein imposed, and if this be not done the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation."

Section 28 provided:

"All citizens who were living on the first day of April, 1899, entitled to be enrolled under Section 21 of the Act of Congress approved June 28, 1899, entitled 'An act for the protection of the people of the Indian Territory, and for other purposes,' shall be placed upon the rolls to be made by a commission under said Act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

It will be observed that Section 7 extends the Arkansas law of descent and distribution to the homestead only without mention of the surplus, and Section 28 applies only to two classes of citizens; those who were living on the 1st day of April, 1899, and who died *prior* to the ratification of the agreement before receiving their allotments; and those living on April 1, 1899, who died *after* ratification of the agreement before receiving their allotments, thus failing to provide the rule for those who died *before* the ratification of the agreement *after* receiving their allotments.

³ McDougal v. McKay, 237 U. S. 372, 59 L. Ed. 1001; Wood v. De Graffenreid, 238 U. S. 284, 59 L. Ed. 1310.

ing his allotment. The provisions putting in force the Creek law of descent and distribution were a concession to the Indians and were largely instrumental in securing the ratification of the agreement by them; and it is definitely settled that the Original Agreement substituted the Creek for the Arkansas law of descent and distribution as to all classes of Creek allotment, including both homestead and surplus.⁴

§ 248. **Creek Law of Descent and Distribution.**—The Creek law of descent and distribution in force in the Creek Nation, prior to the taking effect of the Act of June 28, 1898, and which was revived by the Original Creek Agreement, was contained in Sections 6 and 8, Laws of Muscogee Nation, 1880, p. 132.⁵

These sections are as follows:

Section 6. "Be it further enacted that if any person die, without a will, having property and children, the property shall be equally divided among the children by disinterested persons and in all cases where there are no children, the nearest relation shall inherit the property."

Section 8. "The lawful or acknowledged wife of a deceased husband shall be entitled to one-half of the estate, if there are no other heirs, and an heir's part if there should be other heirs in all cases where there is no will. The husband surviving shall inherit of a deceased wife in like manner."

§ 249. **Where Intestate Leaves Children.**—By Section 6 it is provided that the children of the intestate, in the event of his death without a will, shall divide the property equally. Section 8, however, makes provision for the surviving spouse, and, as whatever interest is given to the surviving spouse by Section 8 must be deducted from the in-

⁴Woodward v. De Graffenreid, 238 U. S. 284, 59 L. Ed. 1310; Washington v. Miller, 235 U. S. 422, 59 L. Ed. 295; McDougal v. McKay, 237 U. S. 372, 59 L. Ed. 1001; Reynolds v. Fewell, 236 U. S. 1, 59 L. Ed. 465; Barnett v. Way, 29 Okla. 780, 119 Pac. 418; De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 624.

⁵De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 624; Divine v. Harmon, 30 Okla. 820, 121 Pac. 219.

terest granted to the surviving children by Section 6, it is apparent that the two sections must be construed together. Section 8 provides that the surviving wife or husband shall be entitled to one-half of the estate if there are no other heirs, "and an heir's part if there should be other heirs." What is meant by an "heir's part?" The Supreme Court of Oklahoma has definitely adopted the following construction of these sections:

The word "heirs" in the expression "if there are no other heirs" is held to mean child, children or their descendants; and an "heir's part," if there should be other heirs, to mean a "child's part." So that the heirs provided for in said section are the "nearest relations" mentioned in Section 6, the children and their descendants, and the surviving spouse. The two sections in order to express the meaning given them by the Supreme Court have been reconstructed by that court as follows:

Section 6. "Be it further enacted that if any person die without a will, having property and children, the property shall descend to the child or children and their descendants, if any, equally, and if no child or descendants, and the estate descended to the intestate on the part of the father, then to the father, and if no father living, then to the brothers and sisters of the blood of the father, etc. If the estate descended to the intestate on the part of the mother, then to the mother and if no mother living, then to the brothers and sisters of the blood of the mother: Provided:"

Section 8. "The lawful or acknowledged wife of a deceased husband shall be entitled to one-half of the estate, if there are no children or their descendants, and a child's part, if any such there be, in all cases where there is no will. The husband surviving shall inherit of the wife in like manner."

From which it follows that, if there be children and

^c De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 624; Divine v. Harmon, 30 Okla. 820, 121 Pac. 219; Bilby v. Brown, 34 Okla. 738, 126 Pac. 1024; Sanders v. Sanders, 28 Okla. 59, 112 Pac. 338; Ground v. Dingman, 33 Okla. 760, 127 Pac. 1078; Bodle v. Shoenfelt, 22 Okla. 94, 97 Pac. 556; Woodward v. De Graffenreid, 238 U. S. 284, 59 L. Ed. 1310.

ing spouse, the children inherit the land to the exclusion of all others. If there be children and surviving, each takes a child's part. If there be no children, surviving spouse, the surviving spouse takes one-half estate with the balance to the "nearest relation." If there be no children or their descendants or surviving, the entire estate goes to the "nearest relation."

0. **"Nearest Relation."**—Section 6 provides: "And in cases where there are no children the nearest relation inherits the property." Who is the "nearest relation?" It is evident that the expression was not intended to include the husband or wife, for they were provided for in Section 8 and the husband and wife are not relations of each other; nor was it intended to include the children, for no provision was applicable only in the absence of children. It is definitely settled, so far as the Supreme Court of Oklahoma is concerned, that the parents are the nearest relations, and that as the Creeks, like other peoples in the state of development, traced their tribal relationship through the maternal line, of these two, the mother is preferred to the father. In case both parents are living the mother inherits the whole interest to the exclusion of the father.

If the mother is dead, the father inherits as the nearest relation. In the event the father and mother are dead, the brothers and sisters inherit.⁷

1. **Non-Citizen Heir Inherited Under Creek Law.**—Under the laws of the Creek Nation, a non-citizen was not permitted to participate in the final distribution of the land monies of the tribe, there was nothing in said laws that excluded such non-citizen from inheriting either. And it

Haffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 101; *Ring v. Diamond*, 23 Okla. 325, 100 Pac. 557; *Sanders v. ...*, 28 Okla. 59, 117 Pac. 338; *Ground v. Dingman*, 33 Okla. 1078; *Scott v. Jacobs*, 40 Okla. 522, 140 Pac. 148; *Big Peoples' Banking & Trust Co.*, 52 Okla. 504, 151 Pac. 849.

is well settled that, prior to the adoption of the supplemental agreement wherein it was provided that the heirs who were citizens or descendants of citizens should be preferred to non-citizen heirs, heirs who were not citizens of the nation inherited equally with those who were. And this was true although the member died before selection and selection was afterward made and patent issued direct to the heirs, for the reason that in such case, although the patent was issued to the heirs, they took such land not by virtue of their participation in the distribution of the lands of the tribe, but by descent from their ancestor in the discharge of whose right the allotment was selected. Intermarriage with a member of the Creek Nation under the laws of that tribe did not, as in the Choctaw and Chickasaw Tribes, invest the one so intermarrying with the right of participation in the land of the tribe, but for the reason above stated, such fact did not prevent his inheriting from his deceased spouse.⁸

§ 252. **Act of May 27, 1902.**—On May 27, 1902, Congress enacted as follows:

“And provided further, that the Act entitled ‘An Act to ratify and confirm an agreement with the Muskogee or Creek Tribe of Indians, and for other purposes’ approved March 1, 1901, insofar as it provides for descent and distribution according to the laws of the Creek Nation, is hereby repealed, and the descent and distribution of lands and monies provided for in said Act shall be in accordance with the provisions of Chapter 49 of Mansfield’s Digest of the Statutes of Arkansas in force in the Indian Territory.”

By a joint resolution of Congress adopted on the same

⁸ Reynolds v. Fewell, 236 U. S. 58, 59 L. Ed. 465; Morley v. Fewell, 32 Okla. 452, 122 Pac. 700; Shellenbarger v. Fewell, 34 Okla. 79, 1 Pac. 617; Reynolds v. Fewell, 34 Okla. 112, 124 Pac. 623; Bilby Brown, 34 Okla. 738, 126 Pac. 1024; Barnett v. Way, 29 Okla. 119 Pac. 418; Woodward v. De Graffenreid, 36 Okla. 41, 131 Pac. 162; Bodle v. Shoenfelt, 22 Okla. 94, 97 Pac. 556.

day, the said Act was to become effective only "from and after July 1, 1902," and it was not in force prior to that date.'

The effect of said Act was to substitute the Arkansas law of descent and distribution contained in Chapter 49 of Mansfield's Digest for the Creek law of descent and distribution, which had been in operation in said nation since May 25, 1901. The Arkansas law, without condition or qualification, remained in force until August 8, 1902, the effective date of the supplemental agreement, which added two provisos.¹⁰

§ 253. **Supplemental Agreement.**—Section 6 of the Supplemental Agreement (Act of June 30, 1902), provided as follows:

"The provisions of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and money provided for by said Act shall be in accordance with Chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: Provided, that only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: And provided further, that if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said Chapter 49."

This section is a re-enactment of the provision of Act of May 27, 1902, with the addition of the two provisos, limiting the descent to the heirs of members, or the descendants

⁹ Sizemore v. Brady, 235 U. S. 441, 59 L. Ed. 308; De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 96 Pac. 624.

¹⁰ Washington v. Miller, 235 U. S. 422, 59 L. Ed. 295; De Graffenreid v. Iowa Land & Trust Co., 20 Okla. 687, 95 Pac. 624.

of members, of the nation, except where there were no such heirs.¹¹

§ 254. **First Proviso.**—The first proviso is as follows:

“Provided, that only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation.”

By this proviso two distinct classes are named who may inherit Creek land. First, those kinsmen who are Creek citizens. Second, those kinsmen who are descendants of Creek citizens.¹²

No one, outside of the two classes named above, had an inheritable status and could inherit, even in the absence of heirs who fulfilled the requirements; and any kinsmen of the classes mentioned, however remote, took the estate to the exclusion of the other heirs.¹³

The descent is to be determined by applying the Arkansas law of descent and distribution to those heirs who have an inheritable status, to wit: citizens or descendants of citizens of the Creek Nation. It has been contended that the first proviso, limiting the descent to members of the nation and their descendants, applied only to estates of members who died before selection. This contention was based upon the use of the words “lands of the Creek Nation,” it being urged that after selection the land segregated by allotment was the individual property of the allottee and therefore not “lands of the Creek Nation.” It is definitely settled, however, that the limitation applies to the estates of those who died after as well as before selection.¹⁴

¹¹ *Washington v. Miller*, 235 U. S. 422, 59 L. Ed. 295; *McDougall v. McKay*, 237 U. S. 372, 59 L. Ed. 1001; *Irving v. Diamond*, 23 Okla. 325, 100 Pac. 557.

¹² *Lamb v. Baker*, 27 Okla. 739, 117 Pac. 189; *Hughes Land Co. v. Bailey*, 30 Okla. 194, 120 Pac. 290.

¹³ *Washington v. Miller*, 235 U. S. 422, 59 L. Ed. 295; *Lamb v. Baker*, 27 Okla. 739, 117 Pac. 189; *Hughes Land Co. v. Bailey*, 30 Okla. 194, 120 Pac. 290; *Iowa Land & Trust Co. v. Dawson*, 37 Okla. 593, 134 Pac. 39; *Washington v. Miller*, 34 Okla. 259, 129 Pac. 51.

¹⁴ *Washington v. Miller*, 235 U. S. 422, 59 L. Ed. 295.

§ 255. **Second Proviso.**—The second proviso is as follows:

“And provided further, that if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said Chapter 49.”

By this proviso, non-citizen heirs were made capable of inheriting, which was denied them under the first proviso, the absence of heirs who were citizens or descendants of citizens. This proviso is not a limitation of the first, but extended only to supply a line of descent where no heirs of the classes mentioned in the first proviso existed.¹⁵

§ 256. **“Citizens” Limited to Enrolled Members.**—It has been held that it is not necessary that one be an enrolled member of the nation to fulfill the requirements of the first proviso “that only citizens of the Creek Nation, male and female . . . shall inherit lands of the Creek Nation.” And that it is sufficient that the heir be of the blood of the tribe.¹⁶

The Supreme Court of the United States, however, in *Campbell v. Wadsworth*, decided December 16, 1918, not officially reported, has held otherwise in the construction of a similar provision of the Seminole Agreement, overruling.¹⁷

§ 257. **Provisos Not Repealed By Act of April 28, 1904.** The Act of April 28, 1904, provided:

“All the laws of Arkansas heretofore put in force in the Indian Territory are hereby continued and extended in their

¹⁵ *Hughes Land Co. v. Bailey*, 30 Okla. 194, 120 Pac. 290; *Lamb v. Baker*, 27 Okla. 739, 117 Pac. 189.

¹⁶ *Lamb v. Baker*, 27 Okla. 739, 117 Pac. 189; *Hughes Land Co. v. Bailey*, 30 Okla. 194, 120 Pac. 290; *Cowokochee v. Chapman*, 171 50.

¹⁷ *Thorne v. Cone*, 47 Okla. 781, 150 Pac. 701; *Wadsworth v. Campbell*, 53 Okla. 728, 154 Pac. 60, 157 Pac. 713.

The Atoka Agreement contained no provision with reference to the laws of descent and distribution of the lands and monies of the Choctaws and Chickasaws, but the Supplemental Agreement, effective on September 25, 1902, was adopted before any allotments were made in those nations. Section 22 of such Supplemental Agreement provided for the descent of the lands of those living upon the date of the ratification of the Act, but who should die before receiving their allotments. In such event, the land to which he would have been entitled, if living "shall descend to his heirs according to the laws of descent and distribution as provided in Chapter 49 of Mansfield's Digest of the Statutes of Arkansas."

While this provision is made to apply only to the estates of those who died prior to selection, the courts will probably hold, following the construction of a similar provision of the Creek Supplemental Agreement, that it was the intention of Congress that the estates of all Choctaws and Chickasaws, whether they died before or after selection, should descend according to the Arkansas law.

Dower was treated in Mansfield's Digest, in Chapter 53 and descent and distribution in Chapter 49, and while only Chapter 49 is made specifically to apply to the descent of the lands of the Choctaws and Chickasaws, that chapter provides for the descent and distribution "subject to the payment of his debts and the widow's dower," which amounts to an adoption of the chapter on dower by implication.²

In any event, the Arkansas law of Dower was applicable to the estates of members of either tribe, who died before selection after the 25th day of September, 1902, and to the estates of those who received their allotments before death after the Act of April 28, 1904.

§ 261. **Curtesy in General.**—There was no chapter

² *Cook v. Childs*, 49 Okla. 321, 152 Pac. 88; *Armstrong v. West*, 195 Fed. (CC) 137.

CHAPTER XXX.

DOWER AND CURTESY.

- 250. Dower in General.
- 251. Curtesy in General.
- 252. Dower—Definition.
- 253. Curtesy—Definition.
- 254. Estate of Inheritance Necessary to Support.
- 255. Dower and Curtesy—Creek Nation.
- 256. Creeks and Seminoles—Non-Citizen Spouse.
- 257. Are Dower and Curtesy Estates by Inheritance?
- 258. District Court Has Jurisdiction to Assign Dower.
- 259. Unassigned Dower Interest Not Subject to Conveyance.

§ 260. **Dower in General.**—By Section 31 of the Act of May 2, 1890, there was extended over the Indian Territory certain laws of the State of Arkansas contained in Mansfield's Digest. Among others, was that upon Descent and Distribution contained in Chapter 49 and that upon Dower contained in Chapter 53 of said digest.

The chapters of Mansfield's Digest extended in force in the Indian Territory by the Act of May 2, 1890, did not, at that time, apply to the persons and estates of members of the Five Civilized Tribes. Congress, by the Acts of June 7, 1897, and June 28, 1898, unquestionably made them applicable to the Creeks, Cherokees and Seminoles. There is a respectable line of decisions, however, which hold that these laws were not applicable to the Choctaws and Chickasaws, until the passage of the Act of April 28, 1904.^a The Supreme Court of Oklahoma, however, has held in several decisions, where the question was directly presented, that the Arkansas law of Dower was in force in the Choctaw and Chickasaw Nations prior to that time.¹

^a See Sec. 238.

¹ *Book v. Childs*, 49 Okla. 321, 152 Pac. 88; *Pierce v. Ellis*, 51 Okla. 152 Pac. 340; *Bridges v. Wright*, 155 Pac. 883.

istence in the Choctaw and Chickasaw Nations until April 28, 1904.

§ 262. **Dower—Definition.**—By Section 2571 of Maxwell's Digest (Sec. 1859, Ind. Ter. Stat.) it was provided

“A widow shall be endowed of the third part of all the lands whereof her husband was seised of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form.”

§ 263. **Curtesy—Definition.**—Curtesy has been defined in the case of *Armstrong v. Wood*, 195 Fed. 137, as follows:

“Curtesy is the estate to which by common law a man is entitled on the death of his wife in the lands and tenements of which she was seized, in possession, in fee simple or in tail during their coverture, provided they had lawful issue born alive which might have been capable of inheriting the estate and it attaches to the wife's equitable as well as legal estate of inheritance.”

By the married woman's enabling provisions of the Constitution of 1874, a married woman was authorized, during her life time, to convey or devise her separate property as thus to defeat the husband's right of curtesy. It attaches only to the estate of which she was seised at the time of her death without a will. As to such estate, however, it exists as at common law.⁴

§ 264. **Estate of Inheritance Necessary to Support.**—In order to entitle the surviving spouse to the estate of either dower or curtesy it is necessary that the deceased should have been seised of an estate of inheritance in the land, i

⁴ *Johnson v. Simpson*, 40 Okla. 413, 139 Pac. 129; *Pierce v. Ford*, 51 Okla. 710, 152 Pac. 340; *Armstrong v. Wood*, 195 Fed. (CC) 137; *Zimmerman v. Holmes*, 159 Pac. 303.

in case of dower, at some time during coverture, and in case of curtesy, at the time of the death of the wife.⁵

Applying the above principle it was held that neither dower nor curtesy attached to the estates of those who died before selection of allotment, although selection was afterwards made, upon the ground that prior to selection the members of the tribes had no estate of inheritance in the public domain of the tribe.⁶

Upon a rehearing of *Cook v. Childs*, reported in 152 Pac., however, it was held that such an estate did entitle the surviving spouse to dower or curtesy and such holding has been adopted by subsequent cases. This conclusion is reached by applying the rule that in such cases the law of descent and distribution in force at the time of the selection, and not at the time of the death, controls the descent, and when selection is afterwards made the inheritance reaches back to the date of the death of the allottee as if made on that date, "thus obviating the necessity of actual seisin, creating a seisin by operation of law."⁷

It was also held in *Morris v. Sweeney*, *supra*, that the husband of a Mississippi Choctaw, who died after selection but before making proof of the three years' continuous residence required by the Choctaw-Chickasaw Supplemental Agreement before being entitled to patent, took an estate by curtesy in the land, notwithstanding it was held in *Crimer Favre*, 146 Pac. 10, that an allottee under such circumstances had no estate of inheritance prior to making such proof.

Sanders v. Sanders, 28 Okla. 59, 117 Pac. 338; *Cook v. Childs*, Okla. 277, 145 Pac. 406, 49 Okla. 321, 152 Pac. 88; *Armstrong v. ...*, 195 Fed. (CC) 137.

Sanders v. Sanders, 28 Okla. 59, 117 Pac. 338; *Cook v. Childs*, 45 Okla. 277, 145 Pac. 406, 49 Okla. 321, 152 Pac. 88.

Pierce v. Ellis, 51 Okla. 710, 152 Pac. 340; *Morris v. Sweeney*, Okla. 163; 155 Pac. 537; *Bridges v. Wright*, 155 Pac. 883; *Powell Attenden*, 156 Pac. 661; *Wadsworth v. Crump*, 53 Okla. 728, 157 Pac. 60, 157 Pac. 713.

§ 265. **Dower and Curtesy—Creek Nation.**—The Arkansas law of descent and distribution was in force in the Creek Nation from the time the office of the Commissioner was opened on April 1, 1899, until the adoption of the Original Creek Agreement. During that time, a large percent of the lands of that nation were provisionally allotted under Section 11 of the Curtis Act. Such provisional allotments did not bestow upon the allottee an estate of inheritance, but only a right of occupancy, which was insufficient to support either dower or curtesy. These allotments were confirmed by Section 6 of the Original Creek Agreement and became inheritable from that time, according to the laws of descent and distribution of the Creek Nation, which was by the said Act substituted for the laws of Arkansas theretofore obtained. The Creek laws recognized such estate as one by curtesy or dower and it is plain that upon the death of an allottee after the adoption of the Original Creek Agreement and prior to July 1, 1902, the effective date of the Act of May 27, 1902, which re-enacted the Arkansas law, no estate by curtesy or dower vested in the surviving spouse. And inasmuch as such allotments made under the Curtis Act, were placed upon the same footing as those made under the Original Agreement, by said Section 6, the same result would follow in the case of allottees who made their selection under the Curtis Act and died before the adoption of the Original Agreement.

§ 266. **Creeks and Seminoles—Non-Citizen Spouse.** Section 6 of the Creek Supplemental Agreement, which re-enacted the provisions of the Act of May 27, 1902, again putting the Arkansas law of descent and distribution in force in the Creek Nation, added this proviso:

“Provided that only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation.”

The question is presented, whether or not, the surviving spouse, who takes a life estate in the lands of an allottee

her as dower or curtesy, may be said to "inherit" such and within the meaning of the above proviso. The Supreme Court of Oklahoma in the case of *Hawkins v. Stevens*,

Pac. 567, held that a non-citizen widow of a Creek allottee, who died in 1906, was entitled to dower, but the question here presented was not considered in that case and cannot be regarded as conclusive of the question. The same proposition is involved in the case of Seminole citizens who died before selection of their allotment. Section of the Seminole Supplemental Agreement provided that if any member shall die after the 31st day of December, 1899, the lands to which he would be entitled if living "shall descend to his heirs, who are Seminole citizens, according to the law of descent and distribution of the State of Arkansas."

§ 267. Are Dower and Curtesy Estates By Inheritance?

A very similar question to the above arises in the construction of Section 22 of the Act of April 26, 1906, and Section 9 of the Act of May 27, 1908, requiring the approval by the Secretary of the Interior or the judge of the county court, of conveyances by full-blood heirs. Section 22 is as follows:

"All conveyances, made under this provision, by heirs who are full blood Indians are to be subject to the approval of the Secretary of the Interior under such rules and regulations as he may prescribe."

And Section 9 reads:

"Provided that no conveyance of any interest of any full blood Indian heir in such land shall be valid, unless approved by the Court having jurisdiction of the settlement of the estate of such deceased allottee."

The Supreme Court of Oklahoma in construing Section has held that, while a husband who takes a life estate in the lands of his wife by right of curtesy is not strictly

speaking, an heir of his wife, he is as much in need of the protection of the Act, as if he were an heir, and that in the case of a full-blood the deed to his life estate is void unless approved by the Secretary of the Interior.⁸

§ 268. **District Court Has Jurisdiction to Assign Dower.**—There is no such estate under the Oklahoma law as dower, and consequently no procedure provided for its assignment. Where the estate, however, was vested by the death of the husband prior to the admission of the State, it was not affected by the change in such law even though it may not have been assigned prior to that time. Under such circumstances, the District Courts of this State, in the exercise of their equitable power have jurisdiction to assign dowers. Partition of real estate, however, is a form of alienation and the District Court has no authority to divest the interest of a full-blood heir in restricted land which is necessarily involved in a decree of partition, said alienation being authorized by Section 9 of the Act of May 27, 1908, only upon approval by the County Court having jurisdiction of the settlement of the estate of the deceased.¹⁰

If a wife who is vested with a dower estate, by the death of her husband, may be considered an heir within the meaning of Section 9, it would seem that the District Court would have no authority to assign such dower in the event that the wife or owner of the fee were a full-blood. In order to permit the partition of restricted land between full bloods, Congress passed the Act of June 14, 1918, which specifically authorizes such partition.

§ 269. **Unassigned Dower Interest Not Subject to Conveyance.**—A widow's right of dower, prior to admeasurement, is not an interest in the land but a mere chose in ac-

⁸ Zimmerman v. Holmes, 159 Pac. 303.

⁹ Powell v. Crittenden, 156 Pac. 661.

¹⁰ Coleman v. Battiest, 162 Pac. 786; Lewis v. Gillard, 173 Pac. 1136.

on which is not capable of assignment to anyone but the owner of the fee, and such attempted assignment is void and conveys no estate to the assignee.¹¹

¹¹ *Byrne v. Kernals*, 55 Okla. 573, 155 Pac. 587; *Carnall v. Williams*, 21 Ark. 62; *Jacoway v. McGorrah*, 21 Ark. 347; *Jacques v. Per*, 31 Ark. 334; *Barnett v. Meacham*, 62 Ark. 313, 35 S. W. 533.

CHAPTER XXXI.

WILLS.

- § 270. Arkansas Law of Wills.
- 271. Devise An Alienation.
- 272. Act of April 26, 1906.
- 273. Date of Death, Not Execution of Will, Determines Ef
- 274. No Devisable Interest Prior to Selection.
- 275. Full Bloods.
- 276. Form of Acknowledgment and Approval.
- 277. Revocation of Will of Full Blood Disinheriting Rela
- 278. Supercedes Section 6500 of Mansfield's Digest.
- 279. Probate Court Has Jurisdiction to Determine Com
With Formalities.
- 280. Act of May 27, 1908.
- 281. "Prevented by Law" Means State Law.

§ 270. **Arkansas Law of Wills.**—By the Act of 1890, there was put in force in the Indian Territory, Chapter 155 of Mansfield's Digest of the Statutes of Arkansas entitled "Wills and Testaments." By the Acts of July 1897, and June 28, 1898, the Arkansas laws extended in force in the Indian Territory, by the Act of May 2, 1904, were made applicable to the Creeks, Cherokees and Chickasaws. Whether they were made applicable, by said Act, to the Choctaws and Chickasaws is an open question.^a The laws were undoubtedly made to apply to the Choctaw and Chickasaws by the Act of April 28, 1904, if not by the former Acts. Such laws remained in force in the Indian Territory until the admission of the State into the Union on November 16, 1907, and the manner of execution, administration and probate of all wills executed by members of the Five Civilized Tribes, until that date, was determined by Chapter 155 of Mansfield's Digest of the laws of Arkansas.

By Section 6500 of Mansfield's Digest it was provided that if any person should omit to mention the name

^a See Sec. 238.

child, if living, or the legal representative of such child, born and living at the time of the execution of the will, he should be deemed to have died intestate as to such child, and he should be entitled to such proportion and share of the estate of the testator as if he had died intestate. Such section was in force in the Indian Territory prior to statehood, and the failure to mention such child, or its legal representative, entitled the child to participate in the distribution of the estate as if no will had been made.¹

§ 271. **Devise An Alienation.**—A devise is an alienation, within the meaning of each of the agreements with the tribes under which their lands were allotted subject to restriction upon alienation; consequently, a will by an allottee, by which he undertook to devise his allotment, was prior to the Act of April 26, 1906, ineffective to convey any interest to the devisee.²

The homestead of a Creek allottee was, however, under certain circumstances, specifically made subject to devise by the Original and Supplemental Creek Agreements and constitutes the only exception to the rule above stated. By Section 7 of the Original Agreement it was enacted that the homestead should remain, after the death of the allottee, for the use and support of children born to him after the ratification of the agreement. It was then provided:

"But if he have no such issue then he may dispose of his homestead by will free from the limitations herein imposed, etc."

Section 16 of the Supplemental Agreement was a re-enactment of Section 7, *supra*, so far as the present subject is concerned, and it has been held in construing both Sections 7

¹ *In re Brown's estate*, 22 Okla. 216, 97 Pac. 613; *Robb v. George*, Ind. Ter. 61, 64 S. W. 615.

² *Taylor v. Parker*, 235 U. S. 42, 59 L. Ed. 121, U. S. v. Zane, 4 Ind. Ter. 185, 69 S. W. 842; *Hayes v. Barringer*, 168 Fed. (CCA) 21; *Semple v. Baken*, 135 Pac. 1141; *Chouteau v. Chouteau*, 49 Okla. 152, 152 Pac. 373; *Hooks v. Kennard*, 28 Okla. 457, 114 Pac. 744; *Taylor v. Parker*, 33 Okla. 199, 126 Pac. 573.

and 16 that the homestead of a Creek allottee, who had issue born subsequent to the adoption of the Original Agreement, or the 25th day of May, 1901, as provided by the supplemental Agreement, was subject to devise by will.³

Notwithstanding Section 6 of the Original Creek Agreement provided that provisional allotments made under section 11 of the Curtis Act should be upon the same basis as allotments selected under the Original Agreement, it has been held that the right to devise his homestead did not extend to one who selected his allotment under the Curtis Act, and died before the adoption of the Original Agreement.⁴

The Act of April 28, 1904, did not remove restrictions upon alienation or authorize the devise of restricted lands.

§ 272. **Act of April 26, 1906.**—Section 23 of the Act of April 26, 1906, is as follows:

“Every person of lawful age and sound mind may by will and testament devise and bequeath all of his estate, real and personal, and all interest therein; Provided, that no will of a full-blood Indian devising real estate shall be valid if such last will and testament disinherits the parent, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States Commissioner.”

The effect of such Act was to permit allottees of the Five Civilized Tribes to devise their allotments by will without restriction or condition, except in the case of full-bloods disinheriting the parent, wife, spouse or children.

³ *In re Brown's estate*, 97 Pac. 613; *Coachman v. Sims*, 33 Okla. 199, 126 Pac. 573.

⁴ *Coachman v. Sims*, 36 Okla. 536, 129 Pac. 845.

⁵ *Taylor v. Parker*, 235 U. S. 42, 59 L. Ed. 121; *Taylor v. Parker*, 33 Okla. 199, 126 Pac. 573.

⁶ *Wilson v. Greer*, 50 Okla. 387, 151 Pac. 629; *Barber v. Barber*, 154 Pac. 1156; *Bell v. Davis*, 55 Okla. 121, 155 Pac. 1132; *Allen v. Brown*, 43 Okla. 144, 141 Pac. 681; *In re Allen's will*, 43 Okla. 392, 144 Pac. 1055; *United States v. Fooshee*, 225 Fed. (CCA

of Death, Not Execution of Will, Deter-
 member of any of the Five Civilized Tribes
 age of the Act of April 26, 1906, was fully
 ting a will which was effective as to all
 testator, except his restricted land. Such
 visible, not by reason of any testamentary
 y reason of the restrictions upon its aliena-
 n effect, reiterated by the testator at each
 e after its execution, and its effect is gov-
 existing at the time of his death and not
 ts execution. Therefore, a will executed
 of April 26, 1906, at which time it was in-
 se his restricted land, where the testator
 ssage, operated to devise such restricted

visible Interest Prior to Selection.—Prior
 otment, a member of the tribe had no inter-
 ted tribal domain of the nation which was
 .⁸

loods.—Section 23 of the Act of April 26,
 an allottee to dispose of his restricted
 ; this proviso:

no will of a full-blood Indian devising real
 lid, if such last will and testament disin-
 wife, spouse, or children of such full-blood
 nowledged before and approved by a judge
 ates Court for the Indian Territory, or a
 nmissioner."

prises as to what is meant by the word
 i the above proviso. There are two pos-
 s: It might be held that only a total de-

50 Okla. 387, 151 Pac. 629; Brock v. Keifer, 157

gton, 168 Fed. (CCA) 221; Coachman v. Sims,
 Pac. 845; Powell v. Crittenden, 156 Pac. 661;
) Okla. 563, 135 Pac. 1141.

privation of all estate, that any of the kindred mentioned would have received by the laws of descent and distribution in force at the time of the death of the testator, would constitute him "disinherited." On the other hand, the bequest to any of the kindred mentioned of an estate, other than he would have been entitled to, had there been no will, may be held to disinherit him to that extent. The latter construction would practically deprive a full-blood Indian of the right to dispose of his real estate by will, in case he had parent, wife, spouse or children, unless approved by a United States Judge or Commissioner or Probate Judge, for the reason that any divergence from the course the estate would have taken, had there been no will, would constitute a disinheritance of one or more of such kindred and invalidate the will. The Supreme Court of the State in a recent case decided by the Commissioner has adopted the latter construction.⁹

The other question is presented whether, in case of a disinheritance of one of the several kindred mentioned, the entire will is invalid and the testator deemed to have died intestate, or is invalid only as to the disinherited person, wife, spouse, or children. It was also held *In re Byford* *supra*, that the will, in case of the disinheritance of one of the heirs was invalid in toto, and not entitled to probate unless acknowledged and approved as required by Section

§ 276. **Form of Acknowledgment and Approval.** This section provides that a will of a full-blood Indian, if it disinherits the relatives therein mentioned shall not be valid "unless acknowledged before and approved by a judge of the United States Court for the Indian Territory or a United States Commissioner."

The following form of acknowledgment and approval has been upheld by the Supreme Court of the State of Oklahoma:

"Be it remembered, that before me, ———, a

⁹ *In re Byford's will*, 165 Pac. 194.

ates Commissioner in and for the Eastern District of the State of Oklahoma, duly appointed and acting as such, on this 1st day of July, 1908, personally appeared ———, to me known to be the identical person who executed the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and he stated and declared to me that said instrument was his last will and testament, and that the same was read over to him, and that he fully understood its contents prior to the execution thereof, and said will is now by me approved. In witness whereof, I have hereunto set my hand and official seal the day and year above written. ———, United States Commissioner for the Eastern District of the State of Oklahoma.^{9a}

§ 277. **Revocation of Will of Full-Blood Disinheriting Relatives.**—Section 8358 of the Revised Statutes of 1910 requires the revocation of a will to be executed in accordance with the same formalities that are necessary for its execution. It has been held, in construing such section, that the revocation of a will of a full-blood, disinheriting relatives named in the proviso to Section 23 of the Act of April 26, 1906, need not be acknowledged and approved in the manner necessary to the validity of the will, in the first instance, under said section.¹⁰

§ 278. **Supercedes Section 6500 of Mansfield's Digest.**—The proviso to Section 23 of the Act of April 26, 1906, requiring approval by the United States Judge or Commissioner of the will of a full-blood Indian disinheriting certain relatives named therein, has been held to repeal Section 6500 of Mansfield's Digest of the laws of Arkansas, that a testator who failed to mention in his will the name of a child or its legal representative should be regarded as having died intestate as to such child or representative.¹¹

In view of the fact that the proviso above mentioned was

^{9a} Proctor v. Harrison, 34 Okla. 181, 125 Pac. 479.

¹⁰ Chestnut v. Capey, 146 Pac. 589.

¹¹ Wilson v. Greer, 50 Okla. 387, 151 Pac. 629.



§ 280

LANDS OF THE FIVE CIVILIZED TRIBES.

applicable only to the wills of full-bloods, such provision could not repeal said Section 6500 as to any members of the Five Civilized Tribes other than full-bloods.

§ 279. **Probate Court Has Jurisdiction to Determine Compliance With Formalities.**—The Probate Courts of the State of Oklahoma, in passing upon the question of admitting to probate a will of a full-blood Indian which beherits the kindred mentioned in Section 23 of the Act of April 26, 1906, has the jurisdiction and authority to determine whether said will is executed in accordance with the requirements of said proviso, and its judgment admitting or denying probate to said will is conclusive and not subject to collateral attack.¹²

§ 280. **Act of May 27, 1908.**—Section 8 of the Act of May 27, 1908, amended the proviso to Section 23 of the Act of April 26, 1906, by adding the words “or a Judge of the County Court of the State of Oklahoma,” so that said proviso as amended now reads:

“Provided, That no will of a full-blood Indian devising an estate shall be valid, if such last will and testament disposes of the property to the parent, wife, spouse, or children of such full-blood Indian unless acknowledged before and approved by a Judge of the United States Court for the Indian Territory or a United States Commissioner, or a Judge of a County Court of the State of Oklahoma.”

Section 9 of the Act of May 27, 1908, provides that the homestead of an allottee, of one-half or more Indian blood, shall remain after his death inalienable, unless restrictions against alienation are removed therefrom, for the use and support of issue, if any, born since March 4, 1906, or their life or lives, until April 26, 1931. It is then provided: “But if no such issue survive, then said allottee, if an

¹² *Homer v. McCurtain*, 138 Pac. 807; *Bell v. Davis*, 55 Okla. 155 Pac. 1132; *In re Inpunnubbee's estate*, 49 Okla. 161, 163 Pac. 346.

may dispose of his homestead by will free from all restrictions." It is plain that this provision withdraws from the operation of the Act of April 26, 1906, by which all lands of Indian citizens might be devised by will, the homestead of the allottee of one-half or more Indian blood, of whom there survives issue born since March 4, 1906. The surplus allotment of such allottee remains as it was before subject to devise.¹³

A possible construction of the statute is that the operation of a will devising the homestead of such allottee shall be suspended during the life of such issue until April 26, 1931; but by the use of the word "inalienable" and the construction placed upon the meaning of said word by the courts prior to the passage of the Act, to the effect that it prohibits a devise by will, it seems probable that Congress intended to prohibit the devise of such land entirely and to leave it after the death of the issue, or April 26, 1931, to be controlled in its devolution by the law of descent and distribution of the State of Oklahoma in force at such time.

§ 281. "Prevented By Law" Means State Law.—Section 8341 of the Revised Statutes of 1910 provides:

"Provided, further, that no person who is prevented by law from alienating, conveying, or incumbering real property while living, shall be allowed to bequeath same by will."

It has been held, in the construction of the above section, that it had reference only to those who were prevented by the laws of the State from alienating or incumbering real estate, and does not apply to members of the Five Civilized Tribes whose lands were restricted by Acts of Congress.¹⁴

¹³ Bell v. Davis, 55 Okla. 121, 155 Pac. 1132.

¹⁴ Walker v. Brown, 43 Okla. 144, 141 Pac. 681; *In re Allen's will*, 44 Okla. 392, 144 Pac. 1055; Brock v. Kelfer, 157 Pac. 88.

CHAPTER XXXII.

RECORDS OF THE COMMISSION AS EVIDENCE

- § 282. Scope of Duties of Commission.
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§ 282. **Scope of Duties of Commission.**—The Commission to the Five Civilized Tribes was created by the Act of March 3, 1893, to effect an extinguishment of the titles and to secure the allotment in severalty of the lands of the Five Civilized Tribes. By the Act of June 10, 1898, the Commission was directed to continue in the exercise of the authority conferred upon it, and it was further provided:

“That said Commission is further authorized and directed to proceed at once to hear and determine the applications of all persons who may apply to them for citizenship in any of said nations, and after said hearing they shall determine the right of said applicant to be so admitted and enrolled.”

By the Act of June 28, 1898, commonly known as the Curtis Act, the Cherokee Roll of 1880 was confirmed, and the Commission directed to enroll as members of such nation all persons then living whose names were found

n. The Dunn Roll of Creek freedmen was also approved and the Commission directed to enroll all persons then living whose names appeared on said roll, together with their descendants born since the date of said roll. These two are the only rolls of any of the tribes that were adopted and confirmed in toto. It was further enacted:

"Said Commission is authorized and directed to make correct rolls of the citizens, by blood of all the other tribes (except Cherokees), eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said Tribes."

It was further provided by Section 21:

"Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribe, or to adopt any other means by them deemed necessary to enable them to make such rolls . . . The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent."

In the subsequent agreements with the several tribes these provisions of the Curtis Act with respect to the tribal rolls and authority of the Commission to determine the rights of membership in the tribes, were specifically ratified and adopted.

§ 283. **The Commission a Quasi-Judicial Tribunal.**—The Commission to the Five Civilized Tribes, in determining who should be enrolled as members of the different tribes and what land should be allotted to any particular member or freedmen, was a quasi-judicial tribunal and its ad-

judication of the questions submitted to it, and of issue of law and fact that it was necessary for it to mine in order to decide such questions and properly form its designated functions, is conclusive and imper to collateral attack. Such findings are admissible in dence and conclusive upon the issues involved in any ceeding wherein they are called into question indepen of the Acts of April 26, 1906, and May 27, 1908, here discussed.¹

But its determination, recital, or report regarding is not necessary to be decided in order to enable it to form its duty, or material to its answers to the ques as to who should be enrolled and what land should b lotted to them and how, is, in the absence of special lation, not an adjudication and is inadmissible in evid upon such issue.²

The records of the Commission in most instances giv age of the allottee with the date on which the calcul was made. The age of the applicant, however, was i portant in the determination of his right to membersh the tribe, nor was it necessary to a decision of his right t rollment. The findings of the Commission, therefore, ing out of consideration the Act of May 27, 1908, wa

¹ Kimberlin v. Commission to Five Civilized Tribes, 104 (CCA) 653; Malone v. Alderdice, 212 Fed. (CCA) 668; Nu Hazelrigg, 216 Fed. (CCA) 330; United States v. Stigall, 224 (CCA) 190; Scott v. Brakel, 43 Okla. 655, 142 Pac. 510; Pl v. Byrd, 43 Okla. 556, 143 Pac. 684; Folk v. United States, 233 (CCA) 177.

² Kimberlin v. Commission to Five Civilized Tribes, 104 (CCA) 653; Malone v. Alderdice, 212 Fed. (CCA) 668; Mil Thompson, 50 Okla. 643, 151 Pac. 192, 163 Pac. 528; Jackson v. 48 Okla. 269, 150 Pac. 162; Bucher v. Showalter, 44 Okla. 69 Pac. 1143; Smith v. Bell, 44 Okla. 370, 144 Pac. 1058; Char Thornburg, 44 Okla. 380, 144 Pac. 1033; Scott v. Brakel, 43 655, 143 Pac. 510; Phillips v. Byrd, 43 Okla. 556, 143 Pac. 684; son v. Durant, 43 Okla. 799, 144 Pac. 592; Perkins v. Bak Okla. 288, 137 Pac. 661; Folk v. United States, 233 Fed. (CCA

adjudication of that question and is inadmissible upon the question of age.³

§ 284. **Relationship.**—The right to membership in none of the tribes depended upon the possession of any prescribed degree of Indian blood. The possession of any Indian blood in the tribe, however slight, was sufficient. It has heretofore been held that, while the determination of the existence of Indian blood was necessary to a decision by the Commission of the right of the applicant to enrollment, the quantum of his Indian blood was not.⁴

The Commission in reaching its conclusion upon the right to enrollment of any applicant must necessarily have considered and determined the parentage of such applicant. Taking into consideration the enrollment records of all the applicants of each tribe, there was thus indirectly established a complete family tree of each member of the tribe, at least so far as his immediate kindred was concerned. The question naturally arises as to the effect of the findings of the Commission upon the question of relationship of such members, for the purpose of determining heirship. Membership in the tribe and right to enrollment was not confined to the legitimate issue of members of said tribe, but included all who could trace the blood of the tribe through either his maternal or paternal parent. It, therefore, follows that the determination by the Commission of the identity of both parents of an applicant was unnecessary to a decision upon his right to enrollment, however advantageous it may have been to the Commission to decide such questions, and that the records of the Commission are inadmissible upon the question of relationship.^{4a} It has been held, however, that the birth affidavits taken by

Salone v. Alderdice, 212 Fed. (CCA) 668; *Charles v. Thornton*, 44 Okla. 380, 144 Pac. 1033; *Phillips v. Byrd*, 43 Okla. 556, 143 Pac. 684; *Scott v. Brakel*, 43 Okla. 655, 143 Pac. 510.

Gunn v. Hazelrigg, 216 Fed. (CCA) 330.

Hughes v. Watkins, 173 Pac. 369.

are not only not conclusive, but are inadmissible in evidence in proceedings wherein such questions are in issue.

§ 287. **Not Rules of Evidence.**—By Section 19 of the Act of April 26, 1906, and Section 3 of the Act of May 27, 1908, Congress enacted that the rolls and enrollment records, respectively, prepared by the Commission to the Five Civilized Tribes, should be conclusive evidence of the quantity of Indian blood and the age of the allottee. These provisions were not intended as a rule of evidence nor did Congress have the power to declare that any question, issue, or asserted fact, should be conclusive upon the courts. Such an enactment would be an invasion of the judicial function of ascertaining and declaring the facts in controversy, and in addition, violative of the fifth amendment of the Constitution of the United States against deprivation of property without due process of law.⁸

Such provisions were intended as conditions attached to the removal, or extension, of the restrictions upon alienation and in such sense are constitutional and valid.⁹

The rule is well expressed in *Phillips v. Byrd*, *supra*:

"It is clear to us that all Congress intended to do by the enactment of that part of the statute under consideration, was to prescribe a condition upon which this class of enrolled citizens and freedmen of the Five Civilized Tribes might alienate their lands. Congress, having reserved the exclusive right

⁷ *Rice v. Ruble*, 39 Okla. 51, 134 Pac. 49; *Perkins v. Baker*, 43 Okla. 288, 137 Pac. 661; *Grayson v. Durant*, 43 Okla. 799, 144 Pac. 592; *Smith v. Bell*, 44 Okla. 370, 144 Pac. 1058; *Bucher v. Shetter*, 44 Okla. 690, 145 Pac. 1143; *Jackson v. Lair*, 48 Okla. 283, 145 Pac. 162; *Miller v. Thompson*, 50 Okla. 643, 151 Pac. 192, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

⁸ *Phillips v. Byrd*, 43 Okla. 556, 143 Pac. 684; *Scott v. Baker*, 43 Okla. 655, 143 Pac. 510; *Yarbrough v. Spaulding*, 31 Okla. 806, 123 Pac. 843; *Bell v. Cook*, 192 Fed. (CC) 597.

⁹ *United States v. Ferguson*, — U. S. —, 62 L. Ed. 592; *Phillips v. Byrd*, 43 Okla. 556, 143 Pac. 684; *Yarbrough v. Spaulding*, 31 Okla. 806, 123 Pac. 843; *Cornelius v. Yarbrough*, 44 Okla. 375, 145 Pac. 1030.

ulate concerning the property of the Indian tribes and their members, could have said, as a condition precedent to alienation, that an Indian should be considered a minor until he reached the age of twenty-five years; and in such cases the enrollment records of the Commission to the Five Civilized Tribes should be conclusive as to what date he should reach this age. Likewise, Congress could have provided that for the purpose of alienation, the members of the tribe should be considered of full age at fifteen years, and that the enrollment records should be conclusive evidence as to when an enrolled citizen or freedman reached his majority, or the age which would authorize him to deal concerning his land."

§ 288. **Not Retroactive.**—The provisions are not retroactive in their effect. Not being rules of evidence, they are not applicable in determining the validity of transactions which were completed prior to their passage, although the case be involved in litigation tried thereafter.¹⁰

§ 289. **Applicable Only With Respect to Restricted Land.**—If such provisions are not rules of evidence, but conditions attached to the removal of restrictions, it would seem to follow that neither the rolls, or enrollment records, would be admissible, thereunder, upon the questions of the degree or decree of blood in controversies, involving the validity of transactions affecting lands which were not, at the time of the passage of the Acts, subject to restrictions. Whether said Acts apply to unrestricted lands as well as restricted lands, it is clear that they have no application to transactions of members of said tribes except as they affect allotted lands of the tribe. The members of the Five

¹⁰ *Williams v. Joins*, 34 Okla. 733, 126 Fed. 1013; *Rice v. Ruble*, Okla. 51, 134 Pac. 49; *Phillips v. Byrd*, 43 Okla. 556, 143 Pac. 684; *Mellus v. Yarbrough*, 44 Okla. 375, 144 Pac. 1030; *Charles v. Warburg*, 44 Okla. 380, 144 Pac. 1033; *Smith v. Bell*, 44 Okla. 370, 144 Pac. 1058; *Grayson v. Durant*, 43 Okla. 799, 144 Pac. 592; *Freeman v. First National Bank*, 44 Okla. 146, 143 Pac. 1165; *Bucher v. Swalter*, 44 Okla. 690, 145 Pac. 1143; *Miller v. Thompson*, 50 Okla. 643, 151 Pac. 192, 163 Pac. 528; *Culver v. Diamond*, 167 Pac. 1148; *Buckhalter v. Vann*, 157 Pac. 1148; *Scott v. Cover*, 155 Pac. 1148.

Civilized Tribes are capable of entering into any legal contract, without restrictions or limitation, except only in respect to their restricted lands.¹¹

Under Section 3 of the Act of May 27, 1908, the enrollment records are admissible for the purpose of proving minority of the allottee, in a proceeding brought to cancel mortgage upon his restricted land, but inadmissible for the purpose of proving minority with respect to the note, the security of which, the mortgage was given.^{11a}

§ 290. **Approved Rolls.**—That part of Section 19 of the Act of April 26, 1906, with reference to the evidence of quantum of Indian blood is as follows:

“And for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior.”

Section 3 of the Act of May 27, 1908, with reference to the same proposition is as follows:

“That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes, and of other persons, to determine questions arising under this Act.”

Section 3 is practically a re-enactment of Section 19. Under said sections, the rolls approved by the Secretary of the Interior are conclusive evidence of the quantum of Indian blood in any issue involving transactions occurring at their passage, and other evidence is inadmissible for the purpose of contradicting or impeaching the said rolls.¹²

¹¹ Post Oak v. Lee, 46 Okla. 477, 149 Pac. 155.

^{11a} Cornelius v. Yarbrough, 44 Okla. 375, 144 Pac. 1030.

¹² United States v. Ferguson, — U. S. —, 62 L. Ed. 592; Yarbrough v. Spaulding, 31 Okla. 806, 123 Pac. 843; Campbell v. Spadden, 34 Okla. 377, 127 Pac. 854, 44 Okla. 138, 143 Pac. 111; Scott v. Brakel, 43 Okla. 655, 143 Pac. 510; Gilcrease v. McCulloch, 162 Pac. 178; Cowokochee v. Chapman, 171 Pac. 50; Lawler v. Raddis, 36 Okla. 616, 129 Pac. 711.

In many instances, particularly in the Seminole Nation, members were enrolled as adopted, without anything to show whether they were of the blood of the tribe, or of Indian blood at all. It has been held that the Commission in enrolling such members had not passed upon the question of their Indian blood and that evidence aliunde might be introduced for the purpose of showing those facts.¹³

Section 19 of the Act of April 26, 1906, was adopted contemporaneously with the same provision of said Act which extended restrictions upon the homestead allotments of full-blood Indians beyond the time designated in the treaties, under which the allotments were made. It seems clear that the manner of determining the quantum of Indian blood was enacted with reference to the provision extending such restrictions as to full bloods, no means having been previously adopted for the purpose of establishing questions of degrees of blood. By the passage of the Act of April 26, 1906, no restrictions upon allotted lands were removed. Restrictions, however, were removed, by said Act, upon the alienation of inherited land. While the removal of restrictions upon inherited lands was not based upon the quantum of Indian blood, a provision requiring the approval by the Secretary of the Interior of the conveyances of full-blood Indians was enacted, and such rolls were, no doubt, intended to be conclusive of that question. Section 3 of the Act of May 27, 1908, was enacted with reference to the removal of restrictions, provided for in that Act, based upon quantum of Indian blood of the allottee.

291. Enrollment Records—Age.—That part of Section 19 of the Act of May 27, 1908, with reference to the rolls of citizenship and the enrollment records of the Commission for the Five Civilized Tribes is as follows:

That the rolls of citizenship and of freedmen of the Five Civilized Tribes, approved by the Secretary of the Interior,

¹³ *United States v. Stigall*, 226 Fed. (CCA) 190; *Lula, Seminole*, No. 908 v. *Powell*, 166 Pac. 1050.

shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes, of no other person, to determine questions arising under the Act, and the enrollment records of the Commissioner to Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman."

This Act was passed and approved on the 27th day of May, 1908. As to the status of allotted lands, however, the Act was not to become effective for sixty days from the date. The courts have not agreed as to the effective date of Section 3. *Bucher v. Showalter*, 44 Okla. 690, 145 P. 1143, holds that Section 3 became effective on the date of its passage. In the later case of *Jackson v. Lair*, 48 Okla. 269, 150 Pac. 162, however, the Supreme Court of Oklahoma without referring to *Bucher v. Showalter*, *supra*, held that it became effective on July 27, 1908.

§ 292. **Enrollment Records—What Are?**—It will be observed that there is a distinction made in Section 3 between the rolls of citizenship, which is made conclusive evidence as to the quantum of Indian blood, and the enrollment records which constitute conclusive evidence of age. The rolls were a compilation from the enrollment records but the latter included data which was not shown upon the rolls themselves. The enrollment records are thus defined by the Supreme Court of Oklahoma:

"The enrollment records of the Commissioner to the Five Civilized Tribes include and embrace all of the testimony and exhibits tending to establish age that were in evidence before the Dawes Commission and the conclusions of the Commission based thereon from the date of the application for enrollment of any particular individual up to the time of the ascertainment by the Commission as to whether the name of such person was to be included upon the final roll of the nation in which he claimed citizenship."^{13a}

^{13a} *Scott v. Brakel*, 43 Okla. 655, 143 Pac. 510; *Duncan v. By*, 44 Okla. 538, 144 Pac. 1053; *Jackson v. McGilbray*, 46 Okla. 203, 144 Pac. 703.

293. Census Card.—Upon the census card were as-
bled by the Commission the facts and conclusions drawn
n the enrollment records in each case. The census card
ot admissible in evidence upon the question of age as
h. In many instances, however, particularly in the early
s of enrollment, the testimony heard upon the applica-
1 for enrollment was not reduced to writing, a resume
reof only, being entered upon the census card. In such
es the census card constitutes the entire enrollment rec-
l and is admissible in evidence, and conclusive upon the
estion of age, not as a census card, but as the enrollment
ord. In such case, however, the census card must be cer-
ed to constitute the entire enrollment record.¹⁴

294. Certificate.—The enrollment records, to be admis-
le in evidence and conclusive upon the question of age, un-
Section 3, must be certified by the officer having in
ge such enrollment records, to constitute the entire en-
nent record, made upon the application for enrollment
re applicant.¹⁵

uch certificate is authorized by and must be made in ac-
ance with Section 5112, Rev. St. of 1910.¹⁶

295. Enrollment Records Conclusive of Age.—In all
es involving the validity of transactions with respect to
icted land, occurring after the taking effect of Section
the Act of May 27, 1908, the enrollment records, if the
t age of the applicant is shown therein, is conclusive,
other evidence is inadmissible for the purpose of con-
icting or impeaching it.¹⁷

Scott v. Brakel, 43 Okla. 655, 143 Pac. 510; Duncan v. Byars,
kla. 538, 144 Pac. 1053; Culver v. Diamond, 167 Pac. 223; John-
r. Alexander, 167 Pac. 989; Sharshontay v. Hicks, 166 Pac. 881,
Pac. 820; Allen v. Doneghey, 52 Okla. 90, 152 Pac. 810.

Sharshontay v. Hicks, 161 Pac. 820, 166 Pac. 881.

Mullen v. Howard, 143 Pac. 659.

Yarbrough v. Spalding, 31 Okla. 806, 123 Pac. 843; Campbell v.
adden, 34 Okla. 377, 127 Pac. 854, 44 Okla. 138, 143 Pac. 1138;

In many cases, however, the enrollment records show only the age in years at the time of the application for enrollment but do not show the exact date of birth. In such event, the enrollment records are conclusive that at the date of the application the applicant had reached the age in years stated, but the exact birth date becomes a question of fact to be proven by any competent evidence.¹⁸

In determining whether the enrollment records show the exact date of birth, only the records themselves may be looked to and recitals or statements contained in the certificate of the custodian are not a part of said records and are not admissible in evidence to supplement them.¹⁹

The birthday of the applicant will not be presumed to correspond with the date of the application for enrollment and a rule of the Department to that effect will not be forced by the courts as a practical construction of the Act.²⁰

Rice v. Anderson, 39 Okla. 279, 134 Pac. 1120; Scott v. Brake, 44 Okla. 655, 143 Pac. 510; Phillips v. Byrd, 43 Okla. 556, 143 Pac. 510; Gilbert v. Brown, 44 Okla. 194, 144 Pac. 359; Cornelius v. Yarbrough, 44 Okla. 375, 144 Pac. 1030; Duncan v. Byars, 44 Okla. 538, 144 Pac. 1053; Jackson v. Lair, 48 Okla. 269, 150 Pac. 162; Miller v. Thompson, 50 Okla. 643, 151 Pac. 192, 163 Pac. 528; Hart v. West, 50 Okla. 643, 151 Pac. 192, 163 Pac. 528; Gilcrease v. McCullough, 162 Pac. 178; Jackson v. Gilbray, 46 Okla. 208, 148 Pac. 703; Hutchinson v. Brown, 167 Pac. 624; Johnson v. Alexander, 167 Pac. 989; Sharum v. Johnson, 167 Pac. 322; McIntosh v. Lincoln, 156 Pac. 1170; Sutton v. Denton, 46 Okla. 8, 154 Pac. 1193; Perryman v. Moran, 54 Okla. 499, 153 Pac. 1168; Tyrell v. Shaffer, 174 Pac. 1074.

¹⁸ Jordan v. Jordan, 162 Pac. 758; Jackson v. Lair, 48 Okla. 269, 150 Pac. 162; Hart v. West, 161 Pac. 534; Hefner v. Harmon, 159 Pac. 650; Hutchinson v. Brown, 167 Pac. 624; McDaniel v. Holland, 230 Fed. (CCA) 945; Etchen v. Cheney, 235 Fed. (CCA) 104.

¹⁹ Gilcrease v. McCullough, 162 Pac. 178; Jackson v. McGill, 46 Okla. 208, 147 Pac. 703.

²⁰ Hart v. West, 161 Pac. 534; Hefner v. Harmon, 159 Pac. 650; McDaniel v. Holland, 230 Fed. (CCA) 945; Gilcrease v. McCullough, 162 Pac. 178.

CHAPTER XXXIII.

TAXATION.

Taxing Power of State Over Lands of Five Civilized Tribes.

Division of Subject.

Exemption by Federal Laws.

Exemption by Treaty Stipulation.

Choctaws and Chickasaws.

Freedmen.

Mississippi Choctaws.

Cherokees—Homestead.

Surplus.

Creeks—Homestead.

Surplus.

Seminoles—Homestead.

Surplus.

296. **Taxing Power of State Over Lands of Five Civilized Tribes.**—Ordinarily the right of a State to subject to taxation the property within her limits, is an incident of sovereignty. The State of Oklahoma, with respect to the right of taxing the lands of the Five Civilized Tribes, however, is in a peculiar position. By Section 1 of the Act of June 16, 1906 (Enabling Act), the present State of Oklahoma was authorized to adopt a constitution and be admitted into the Union as a State: "Provided that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the owners of said territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights, by treaties, agreements, law or otherwise, which it would have been competent to make if this Act had not been passed." And by Section 22 of said Act, the Constitutional Convention was required by ordinance irrevocable to accept the terms and conditions thereof, which

was done on the 22nd day of April, 1907. In pursuance of the paramount authority of Congress with respect to the persons and property of the Indians, there was exempted from taxation by Art. X, Section 6 of the Constitution "such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States Government, or by Federal laws, during the force and effect of such treaties or Federal laws."

The lands of the Five Civilized Tribes are therefore subject to taxation by the State except as they may be exempt therefrom by virtue of some treaty between the United States and the respective tribes, or a law of Congress or provision of the State Constitution.¹

§ 297. **Division of Subject.**—Exemption from taxation in varying degrees, was granted to the members of each of the Five Civilized Tribes, under the treaties by which the lands of the several tribes were allotted in severalty. These treaty provisions have been held to confer vested rights which were not subject to abrogation by Congress. Questions arising under such provisions will be considered under the subject, "Exemption by Treaty Stipulation."

In addition to such exemption provisions, the lands of each tribe were allotted subject to certain restrictions upon alienation, and Congress by Act of April 26, 1906, provided that lands upon which restrictions were not removed by that Act should not be subject to alienation. Questions involving exemption from taxation by reason of the restrictions upon alienation and Acts of Congress will be discussed under the subject "Exemption by Federal Law."

§ 298. **Exemption by Federal Laws.**—By Section 19 of the Act of April 26, 1906, it was enacted by Congress: "Provide

¹ Shock v. Sweet, 45 Okla. 51, 145 Pac. 388; Kidd v. Roberts, Okla. 603, 143 Pac. 862; Allen v. Trimmer, 45 Okla. 83, 144 Pac. 795; Gleason v. Wood, 38 Okla. 502, 144 Pac. 702; United States v. Shock, 187 Fed. (CC) 862.

er that all lands upon which restrictions are removed be subject to taxation, and all other lands shall be pt from taxation, so long as the title remains in the ial allottees." And by Section 4 of the Act of May 1908, it was provided: "That all lands from which re- ions have been removed shall be subject to taxation ill other civil burdens as though it were the property er persons than allottees of the Five Civilized Tribes." e construction of the two Acts it has been held that eriod of exemption from taxation is coextensive with eriod of restriction upon alienation. The proposition is stated in *United States v. Shock, infra*: "From this clear that regardless of prior legislation or treaties, ntention and policy of Congress as expressed by the Acts last referred to, was that so long as these allotted remain subject to any restriction upon alienation they not be taxed by the State, but whenever all restric- upon alienation shall be removed, then such lands be subject to taxation and other civic burdens to other lands are subjected. Therefore any attempt, on art of the State, to tax restricted lands would be in tion not only of the Acts of Congress enacted pur- to its paramount and sole right to legislate regarding lands, but would also violate the exemption expressed e State constitution.²

d the rule has been applied not only in the case of al- land, but also of inherited land which descended to eirs with restriction upon its alienation. Accordingly been held that land which descended to the heirs sub- the restrictions that applied to it in the hands of the e, under the several agreements, was exempt from on during the term of such restriction, as well as the ead of an allottee of one-half or more Indian blood g issue born subsequent to March 4, 1906, restricted

ted States v. Shock, 187 Fed. (CC) 862; Rider v. Helms, 48 10, 150 Pac. 154; Watkins v. Howard, 166 Pac. 706.

for the support of such issue under the Act of May 27, 1908.^{3a} But minority by itself carries no exemption.^{3a}

It has been further held that the requirement that the conveyances of full-blood Indian heirs be approved by the Secretary of the Interior or by the County Court under Section 22 of the Act of April 26, 1906, and of Section 9 of the Act of May 27, 1908, rendered the inherited lands of full-blood Indian heirs restricted in the sense that they were not subject to taxation, although they would have been alienable by heirs less than full bloods.⁴

It is difficult to see how the conclusion that restricted inherited lands are non-taxable can be predicated upon the Acts of April 26, 1906, and May 27, 1908. Under Section 19 of the first mentioned Act the exemption by express provisions, continues only "as long as the title remains in the original allottee." Section 4 of the Act of May 27, 1908, contains no exemption clause at all. It merely provides that lands from which restrictions are removed shall be subject to taxation and other civil burdens, and at most can be regarded only as an expression of legislative opinion that the lands from which restrictions were removed by that Act, without such provision, would not be subject to taxation. The assessment and levy of taxes against real estate creates a lien which can be enforced only by the sale of the property assessed in satisfaction of the lien and is inconsistent with the restrictions upon alienation imposed by Congress upon the lands of the Five Civilized Tribes. The construction supported by the better reasoning is that restricted lands, whether allotted or inherited, are exempt

³ United States v. Shock, 187 Fed. (CC) 870; Marcy v. Board of County Commissioners, 45 Okla. 1, 144 Pac. 611; McGuisey v. Board of County Commissioners, 45 Okla. 10, 144 Pac. 614; Watkins v. Howard, 166 Pac. 706.

^{3a} M'Nee v. Whitehead, 253 Fed. (CCA) 546.

⁴ United States v. Shock, 187 Fed. 870; Marcy v. Board of County Commissioners, 45 Okla. 1, 144 Pac. 611; McGuisey v. Board of County Commissioners, 45 Okla. 10, 144 Pac. 614; Watkins v. Howard, 166 Pac. 706.

from taxation because such power in the State is inconsistent with the restrictions upon alienation which Congress has imposed, and that part of Section 19 of the Act of April 26, 1906, which provides, "and all other lands (except those from which restrictions were removed by that act) shall be exempt from taxation as long as the title remains in the original allottee," was merely a legislative expression of the rule that already obtained. Under such instruction the lands from which restrictions were removed by the Acts of April 26, 1906, and May 27, 1908, except where vested rights of exemption were conferred by treaty stipulation, were taxable by reason of the express provisions of those Acts. Restricted inherited lands are non-taxable because the exemption implied in the restrictions to which they are subject has not been removed, and not because they were rendered non-taxable by either of said Acts.⁵

§ 299. **Exemption By Treaty Stipulation.**—The lands of each of the Five Civilized Tribes were by provisions inserted in the agreements with such tribes, exempted from taxation, to an extent and for a period therein prescribed, in which respects, none of the treaties were identical. Congress, by Section 19 of the Act of April 26, 1906, and Section 4 of the Act of May 27, 1908, provided that all lands from which restrictions were removed should be subject to taxation and all other civil burdens, to which the lands of other than members of the tribes were subject. The language of those two Acts are plain and unequivocal, and there can be no doubt as to the legislative intent and purpose. In so far as the power was in Congress to so provide the effect was to render the unrestricted lands of members of all of said tribes subject to taxation. To the extent that such legislation was beyond the power of Congress, the acts were ineffective and such lands continued to be exempt from taxation. In order to determine the authority of Congress it is necessary to consider the nature and effect of the exemption provisions of the several treaties.

Rider v. Helms, 48 Pac. 610, 150 Pac. 154.

It is a general rule that Congress has plenary power of legislation over the Indian tribes, their property and tribal affairs and that such tribes acquire no vested right under any law or treaty, that would prevent its repeal or abrogation by subsequent Act. The Supreme Court of the United States, however, has distinguished between tribal property and private property, observing in *Choate v. Trapp*, *infra*: "But there is a broad distinction between tribal property and private property and between the power to abrogate a statute and the authority to destroy rights acquired under such law." It is held that the exemption from taxation under the different treaties was a vested property right, in consideration whereof, the allottees had waived all claim of right to the lands of the tribe, except that selected for his own allotment and was binding upon the United States and could not be withdrawn. The Court expresses the rule in the following language:

"The patent and the legislation of Congress must be construed together, and when so construed, they show that Congress, in consideration of the Indians' relinquishment of all claims to the common property and for other satisfactory reasons, made a grant of land which should be non-taxable for a limited period. The patent issued in pursuance of those statutes gave the Indians as good a title to the exemptions as it did to the land itself. Under the provisions of the Fifth Amendment, there was no more power to deprive him of the exemption than of any other right in the property."

To the extent that the Acts of April 26, 1906, and May 27, 1908, attempted to abrogate such vested rights of exemption they were unconstitutional and void.⁶

⁶ *Choate v. Trapp*, 224 U. S. 665, 56 L. Ed. 941; *English v. Richardson*, 224 U. S. 680, 56 L. Ed. 949; *Gleason v. Wood*, 224 U. S. 679, 56 L. Ed. 947; *Sweet v. Shock*, — U. S. —, 62 L. Ed. 132; *Weilep v. Andrain*, 36 Okla. 288, 128 Pac. 254; *Whitmire v. Trapp*, 33 Okla. 429, 126 Pac. 578; *Lieber v. Rogers*, 37 Okla. 614, 133 Pac. 30; *Kidd v. Roberts*, 43 Okla. 603, 143 Pac. 862; *Rider v. Helm*, 100 Pac. 154; *Brown v. Denny*, 52 Okla. 380, 152 Pac. 1103; *Davenport v. Doyle*, 157 Pac. 110.

300. Choctaws and Chickasaws.—By Section 29 of the Atoka Agreement it was provided:

All the lands allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent."

There was no similar provision in the Supplemental Agreement, and Section 29, *supra*, was not superceded by the latter Act. By virtue of such provision the lands both homestead and surplus, of members of the Choctaw and Chickasaw Nations, are non-taxable, for twenty-one years from date of patent, while the title remains in the original allottee, notwithstanding the Acts of April 26, 1906, and May 1908. Such exemption did not run with the land, and did not attach in favor of the heirs or grantees.⁷

301. Freedmen.—The Choctaw and Chickasaw freedmen, unlike the freedmen of the other tribes, were not members of the tribes, and their right of participation in the lands of the nations extended only to forty acres each. The claim of the Choctaw freedmen was based upon the action of the Choctaw Nation in bestowing such right in pursuance of the treaty with the United States of 1866. The Chickasaws took no action to secure the rights of their freedmen under said treaty and allotments of forty acres each, were made to them by virtue of an Act of Congress, for which compensation was made to the tribes by the United States of the land devoted to that purpose.

Section 29 of the Atoka Agreement which exempted the lands of the members of the tribes from taxation was made applicable to the lands of the freedmen by this provision of the section: "This provision shall also apply to the Choctaw and Chickasaw freedmen to the extent of his allotment." There is no question that by said provision the lands of such freedmen were exempted from taxation for the same period that applied to the lands of the members of the tribes.

Section 29 of the Atoka Agreement which exempted the lands of the members of the tribes from taxation was made applicable to the lands of the freedmen by this provision of the section: "This provision shall also apply to the Choctaw and Chickasaw freedmen to the extent of his allotment." There is no question that by said provision the lands of such freedmen were exempted from taxation for the same period that applied to the lands of the members of the tribes.

⁷Boate v. Trapp, 224 U. S. 665, 56 L. Ed. 941; Gleason v. Wood, 101 U. S. 679, 56 L. Ed. 947; M'Nee v. Whitehead, 154 Fed. (CCA) 101.

plied to the lands of members of the tribe. But unless such grant was a vested property right, of which they could not be deprived under the 5th Amendment of the Constitution, this exemption was lost by virtue of Section 4 of the Act of May 27, 1908. Construing the case of *Choate v. Trapp*, *supra*, to hold that the exemption enjoyed by the members of the tribes was not subject to be abrogated by Congress, for the reason that it was granted to them in consideration of their relinquishment of all right to the common domain of the tribes, it has been held that the Chickasaw freedmen were not within the purview of that case for the reason that they had no right of participation in excess of the land they received and therefore surrendered nothing; that the forty acres received by them was the result of the bounty of the United States, as was also the exemption from taxation which was subject to be withdrawn, at the will of Congress.⁸

And the same reasoning seems equally applicable to the Choctaw freedmen.

That position seems sound provided that the holding in *Choate v. Trapp* and similar cases was predicated solely upon the proposition that the exemption was immune from abrogation by Congress, only because of the bargain by which it was secured. The Supreme Court seems to intimate, however, that its conclusion would have been the same, had that aspect of the matter been absent, when it used this language: "There was here, then, an offer of non-taxable land. Acceptance by the party to whom the offer was made with consequent relinquishment of claim to other land, furnished a part of the consideration, indeed, any was needed in such a case, to support either grant or the exemption."

§ 302. **Mississippi Choctaws.**—Those members of the Choctaw Tribes, who did not join in the immigration to the Choctaw country but remained in Mississippi, and who

⁸ *Allen v. Trimmer*, 45 Okla. 83, 144 Pac. 795.

d the name of Mississippi Choctaws did not lose their membership, under Section 14 of the treaty of September 27, 1830. They forfeited only participation in the annuity. It would therefore seem that the status of their lands with respect to exemption from taxation is different from that of other members of the tribes.

It has been held that the lands of Mississippi Choctaws are not subject to taxation until after proof of bona fide purchase under Section 42 of the Supplemental Agreement.^{8a}

303. Cherokees—Homestead.—By Section 13 of the Cherokee Agreement each member was required to designate, out of his allotment, forty acres of land as a homestead which was inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of the allotment. It was further provided: "During the time said homestead is held by the allottee the same shall be non-taxable and shall not be liable for any debt contracted by the owner thereof while so held by him." By virtue of such provision the homestead of forty acres was exempted from taxation during the time it was held by the allottee, and such exemption was not subject to abatement by the Act of May 27, 1908. No such exemption attached to the land in favor of heirs, or grantees.⁹

304. Surplus.—Unlike the case of the Choctaws, and Chickasaws, the grant of non-taxable land by the Cherokee Agreement extended only to the homestead. Whatever exemption from taxation the surplus enjoyed was by reason of general restrictions upon alienation. When the surplus became alienable either by virtue of the expiration of the

⁸Blackwell v. Harts, 167 Pac. 325.

⁹Wellep v. Andrain, 36 Okla. 288, 128 Pac. 254; Whitmire v. Wp, 33 Okla. 429, 126 Pac. 578; Kidd v. Roberts, 43 Okla. 603, Pac. 862; Rider v. Helms, 48 Okla. 610, 150 Pac. 154; Brown v. Gay, 52 Okla. 380, 152 Pac. 1103.

restricted period or the removal of such restrictions of Congress or by the Secretary of the Interior it is subject to taxation.¹⁰

And it was held in *Rider v. Helms*, *supra*, that the provisions in the Cherokee Agreement which exempted it plus from taxation, was that in Section 14 against involuntary alienation and not the restrictions contained in Section 15 against voluntary alienation; and that such exemption from taxation expired with the restrictions against voluntary alienation, five years from the date of the patent and not five years after issuance of patent.

§ 305. **Creeks—Homestead.**—Section 16 of the Creek Agreement provides: "Each citizen select from his allotment forty acres of land, or a portion of a quarter section, as a homestead, which shall be exempt from taxation, inalienable and free from any encumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to the allottee for his homestead, in which this condition shall appear." Section 7 of the Original Agreement was practically identical. Such provisions bestowed a vested right of exemption and were not subject to abrogation by Congress. It was attempted by the Act of May 27, 1908.¹¹

It will be observed that the above section does not provide for the exemption, only during the time that it is claimed by the allottee as is the case with the Cherokees, Chickasaws and Choctaws.

In the case of *Schock v. Sweet*, 145 Pac. 388, the Supreme Court of Oklahoma specifically held that the exemption

¹⁰ *Kidd v. Roberts*, 43 Okla. 603, 143 Pac. 862; *Rider v. Helms*, 43 Okla. 610, 150 Pac. 154; *Brown v. Denny*, 52 Okla. 380, 1103.

¹¹ *English v. Richardson*, 224 U. S. 680, 56 L. Ed. 949; *Schock v. Sweet* — U. S. —, 62 L. Ed. 132; *Lieber v. Rogers*, 104 Okla. 614, 133 Pac. 30; *Davenport v. Doyle*, 157 Pac. 110.

nal to the allottee and did not apply to the land in the of his assignee. And in the case of *Davenport v.* , 157 Pac. 110, the same court held that such land was pt "while it possessed the homestead characteristic." The same Court of the United States, however, upon the ap- of the first-mentioned case apparently decided the case the theory that the exemption, if it had not been sur- red by the allottee in accordance with the Act of h 3, 1903, might be invoked by the vendee.¹³ That court, ver, in the recent case of *Fink v. Muskogee County*, not eported, has held otherwise.

306. **Surplus.**—As in the case of the Cherokees the of non-taxable land by the Agreement extended only e homestead, and such exemption as attached to the us, was by reason of the general restrictions against ation. When it became alienable either by virtue of xpiration of the restricted period of the removal of ctions by Act of Congress or by the Secretary of the ior it was subject to taxation.¹⁴

307. **Seminole—Homestead.**—The Original Seminole ement provided "Each allottee shall designate one of forty acres, which shall by the terms of the deed, ide inalienable and non-taxable as a homestead in per- ty." By Act of March 3, 1903, the restriction upon ation was modified and it was rendered inalienable during the lifetime of the allottee, not exceeding twen- e years from the date of the deed. The non-taxable sion of the Original Agreement, however, was not ed, and in view of the holding in *Choate v. Trapp*, ess had not the power to modify such exemption, had empted to do so. Allotment in the Seminole Nation ompleted on June 28, 1902, prior to the passage of the f March 3, 1903, although deeds were not delivered

reet v. Shock — U. S. —, 62 L. Ed. 132.
 avenport v. Doyle, 157 Pac. 110.

until afterwards, and the Seminoles, like the Choctaws and Chickasaws and other tribes, relinquished their right to the common domain of the tribe by acceptance of patent. They are therefore squarely within the reasoning of the decisions of the Supreme Court of the United States holding that such tax exemption was a vested right which could not be abrogated by Congress.¹⁵

Under the provisions of the Original Agreement, the homestead is not subject to taxation. It has been contended that such exemption by reason of the peculiar wording of the section, applied only during the period of homestead occupancy. The homestead under the agreements with the several tribes, however, was merely the name adopted for that part of the allotment of each member, that was reserved for his use by more drastic restrictions than applied to the balance of the allotment, and its character was in no manner dependent upon occupancy. It is therefore not believed that it was the intention of Congress that its status should be determined by Federal or State law applicable to the homestead under exemption statutes.

§ 308. **Surplus.**—There was no provision exempting the surplus from taxation. If it is alienable it is taxable; if it is not alienable it is not taxable.¹⁶

¹⁵ Wood v. Gleason, 43 Okla. 9, 140 Pac. 418; Marcy v. Board of County Commissioners, 45 Okla. 1, 144 Pac. 611; McGulsey v. Board of County Commissioners, 45 Okla. 10, 144 Pac. 614.

¹⁶ Marcy v. Board of County Commissioners, 45 Okla. 1, 144 Pac. 611; McGulsey v. Board of County Commissioners, 45 Okla. 10, 144 Pac. 614; United States v. Shock, 187 Fed. (CC) 862.

CHAPTER XXXIV.

CHAMPERTY.

309. Champerty.

§ 309. **Champerty.**—Sections 2259 and 2260 of the Revised Statutes of 1910 provide:

“2259. **Buying Lands in Suit.**—Any person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not being in the possession thereof, while such lands or tenements are the subject of controversy, by suit in any court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor.”

“2260. **Buying Pretended Titles.**—Any person who buys or sells, or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof, or the person making such promise or covenant has been in possession, or he and those by whom he claims have been in possession of the same, or of the revision and remainder thereof, or have taken the rents and profits thereof for the space of one year before such grant, conveyance, sale, promise or covenant made, is guilty of a misdemeanor.”

In construing said sections it has been held in numerous instances that a conveyance in controvention of such provisions is void as to a party in possession of the premises claiming adversely to the grantor. As between the grantor and grantee, however, and all persons other than the one in possession it is valid and conveys the interest of the grantor. Section 2260 has been generally applied in the cases of conveyances of their lands by allottees of the Five Civilized Tribes, after removal of restrictions, when a former grantee was in possession, claiming under a conveyance executed while the land was not subject to alienation. And in

several cases, where the question has been directly raised, it was held by the Supreme Court that the statute applied to conveyances by members of the Indian tribes as well as by other persons.¹

Those cases have, however, been expressly overruled, and it is now definitely settled that the restrictions upon alienation of the lands of the Five Civilized Tribes are controlled exclusively by Federal enactment, and that conditions or qualifications cannot be added thereto by the Oklahoma law upon the subject of Champerty. The rule is thus stated in *Murrow Indian Orphans' Home v. McClendon*, the leading case, on the subject:


“Do the statutes of this State, in any way, attempt to regulate or control the terms upon which these restricted lands may be sold, or the conditions under which title to them may pass? No one has title to these restricted lands except the Indian. And his title is by the government so firmly vested in him that even he himself can only divest it with the consent and under the direction of Congress. Congress reserved the right to control the sales, and prescribe the conditions under which titles to these lands might pass. Then how can the State, without the consent of Congress, impose conditions in reference to the passing of these titles? Can a title which is good under the acts of Congress and the rules and regulations of the Department of the Interior be invalidated by a provision in the statutes of Oklahoma? Can these conveyances be burdened with a single provision of our statute, without the consent of Congress? If so, then why can they not be burdened with every provision of our statute with reference to conveyances, and thus the acts of Congress be superseded? We believe that, when the acts of Congress and the regulations of the Department of the Interior say to a purchaser of these lands, “You have title as against the world,” the statute laws of Oklahoma cannot impose an additional condition, before recognizing the

¹ *Sims v. Brown*, 46 Okla. 767, 149 Pac. 876; *Goodwin v. Mullen*, 150 Pac. 680; *Miller v. Fryer*, 35 Okla. 145, 128 Pac. 713; *Ruby v. Nunn*, 37 Okla. 389, 132 Pac. 128; *Oklahoma Trust Co. v. Stein*, 39 Okla. 756, 136 Pac. 746.

hat purchaser as against the world. He has the d of title that the acts of Congress contemplate he ave. And Congress has never seen fit to impose iperty statute upon these restricted lands. Hence ot apply. But a purchaser having made his pur conformity to the acts of Congress and the regula- he Department of the Interior takes title as against l.'''

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w Indian Orphans' Home v. McClendon, 166 Pac. 1101; Grayson, 166 Pac. 1077; Nivens v. Adams, 170 Pac. 473; v. Riddle, 171 Pac. 330; Ashton v. Noble, 46 Okla. 296, 042.





Compilation of all Federal legislation and allotment agreements affecting the allotment of the lands of the Five Civilized Tribes from March 1, 1889, to date, together with the Arkansas statutes of conveyances, descent and distribution and dower, and the tribal statutes of descent and distribution.



CHAPTER XXXV.

ACT MARCH 1, 1889.

Act establishing a United States Court in the Indian Territory. (25 Stat. 783.)

- 10. Establishing United States Court.**
- 11. Jurisdiction of United States Court.**
- 12. Certain Criminal Laws Not Applicable to Indians.**

§ 310. Establishing United States Court.—(Sec. 1.) Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that a United States Court is hereby established, whose jurisdiction shall extend over the Indian Territory, bounded as follows, to-wit: North by the State of Kansas, east by the States Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the Territory of New Mexico; and a judge shall be appointed for said court by the President of the United States, by and with the advice and consent of the Senate, who shall hold his office for a term of four years, and until his successor is appointed and qualified, and receive a salary of three thousand five hundred dollars per annum, to be paid from the treasury of the United States in like manner as the salaries of judges of the United States District Courts.

§ 311. Jurisdiction of United States Court.—(Sec. 6.) That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizen or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy or damages or money claimed shall amount to one hundred



§ 312

LANDS OF THE FIVE CIVILIZED TRIBES.

dollars or more. **Provided,** That nothing herein contained shall be so construed as to give the court jurisdiction of controversies between persons of Indian blood only **provided,** further, that all laws having the effect to prohibit the Cherokee, Choctaw, Creek, Chickasaw and Seminole Nations, or either of them, from lawfully entering leases or contracts for mining coal for a period not exceeding ten years, are hereby repealed; and said court shall have jurisdiction over all controversies arising out of mining leases or contracts and of all questions of title, rights or invasions thereof where the amount involved exceeds the sum of one hundred dollars.

§ 312. **Certain Criminal Laws Not Applicable to Indians.**—(Sec. 27.) That sections five, twenty-three, twenty-four and twenty-five of this Act shall not be so construed as to apply to offenses committed by one Indian upon the person or property of another Indian.

CHAPTER XXXVI.

ACT MAY 2, 1890.

An Act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States Courts in the Indian Territory, and for other purposes. (26 Stat. 81.)

- § 313. Jurisdiction of United States Courts.
- 314. Judicial Divisions.
- 315. Venue.
- 316. Jurisdiction of Indian Tribunals.
- 317. Certain Laws of Arkansas Put in Force.
- 318. Attachments and Executions.
- 319. Jurisdiction of Indian Courts.
- 320. Making Arkansas Laws Applicable.
- 321. Criminal Laws.
- 322. Concurrent Jurisdiction.
- 323. Jurisdiction of Controversies Between Citizens and Non-citizens.
- 324. Lotteries.
- 325. Clerks to Issue Marriage Licenses—*Ex-officio* Recorder.
- 326. Marriages According to Indian Laws.
- 327. United States Commissioners.
- 328. Constables.
- 329. Preliminary Examinations.
- 330. Extradition.
- 331. Appeals and Writs of Error.
- 332. Indians May Become Citizens of the United States.

§ 313. **Jurisdiction of United States Court.**—(Sec. 29.) That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this Act, shall, for the purpose of this Act, be known as the Indian Territory;

And the jurisdiction of the United States Court established under and by virtue of an Act entitled "An Act to establish a United States Court in the Indian Territory and for other purposes," approved March first, one thousand eight hundred and eighty-nine, is hereby limited to extend only over the Indian Territory as defined in said section; that the court established by said Act in addition to the jurisdiction conferred thereon by said Act shall have and exercise within the limits of the Indian Territory jurisdiction in all civil cases in the Indian Territory except cases over which the tribal courts have jurisdiction;

And in all cases on contracts entered into by or for any tribe or nations with citizens of the United States in good faith and for valuable consideration, and in accordance with the laws of such tribe or nation, and said contracts shall be deemed valid and enforced by said court and in all cases over which jurisdiction is conferred by this Act or may hereafter be conferred by Act of Congress and the provisions of this Act hereinafter set forth shall apply to said Indian Territory only.

§ 314. **Judicial Divisions.**—(Sec. 30.) That for the purpose of holding terms of said court, said Indian Territory is hereby divided into three divisions, to be known as the first, second, and third division.

The first division shall consist of the country comprised by the Indian tribes in the Quapaw Indian Agency, that part of the Cherokee country east of the ninety-sixth meridian and all of the Creek country; and the place for holding said court therein shall be at Muskogee.

The second division shall consist of the Choctaw and Chickasaw countries, and the place for holding said court shall be at St. Alister.

The third division shall consist of the Chickasaw and Seminole countries, and the place for holding said court therein shall be at Ardmore.

That the Attorney-General of the United States may, if in his judgment it shall be necessary, appoint an assistant attorney for said court.

And the clerk of said court shall appoint a deputy clerk in each of said divisions in which said clerk does not himself reside at the place in such division where the terms of said court are to be held. Such deputy clerk shall keep his office and reside at the place appointed for holding said court in the division of such residence, and shall keep the records of said courts for such division, and in the absence of the clerk may exercise all the official powers of the clerk within the division for which he is appointed:

Provided, That the appointment of such deputies shall be approved by said United States Court in the Indian Territory, and may be annulled by said court at its pleasure, and the clerk shall be responsible for the official acts and negligence of his respective duties.

The judge of said court shall hold at least two terms of said court each year in each of the divisions aforesaid, at such regular times as said judge shall fix and determine, and shall be paid his actual traveling expenses and subsistence while attending and holding court at places other than Muskogee.

And jurors for each term of said court, in each division, shall be selected and summoned in the manner provided in said Act, three jury commissioners to be selected by said court for each division, who shall possess all the qualifications and perform in said division all the duties required of the jury commissioners provided for in said Act.

§ 315. **Venue.**—All prosecutions for crimes or offenses hereafter committed in said Indian Territory shall be cognizable within the division in which such crime or offense shall have been committed.

And all civil suits shall be brought in the division in which the defendant or defendants reside or may be found; but if there be two or more defendants residing in differ-



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ent divisions, the action may be brought in any division in which either of the defendants resides or may be found.

And all cases shall be tried in the division in which process is returnable as herein provided, unless said judge shall direct such case to be removed to one of the other divisions:

§ 316. Jurisdiction of Indian Tribunals.—Provided, however, That the judicial tribunals of the Indian Nation shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of said nation by nativity or by adoption shall be the only parties, and as to all such cases the laws of the State of Arkansas shall be extended over and put in force in said Indian Territory; this Act shall not apply.

§ 317. Certain Laws of Arkansas Put in Force.—31.) That certain general laws of the State of Arkansas, in force at the close of the session of the general assembly of that State of eighteen hundred and eighty-three, and published in eighteen hundred and eighty-four in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory; and if Congress shall otherwise provide, that is to say, the provisions of the said general statutes of Arkansas relating to administration,

Chapter one, and the United States Court in the Indian Territory herein referred to shall have and exercise the powers of courts of probate under said laws; to appoint administrators,

Chapter two, and the United States marshal of the Indian Territory shall perform the duties imposed by chapter on the sheriffs in said State;

to arrest and bail, civil, chapter seven;

- assignment for benefit of creditors, chapter eight;
- attachments, chapter nine;
- attorneys at law, chapter eleven;
- bills of exchange and promissory notes, chapter four-
- ;
- civil rights, chapter eighteen;
- common and statute law of England, chapter twenty;
- contempts, chapter twenty-six;
- municipal corporations, chapter twenty-nine, division
- ;
- costs, chapter thirty;
- descents and distributions, chapter forty-nine;
- divorce, chapter fifty-two, and said court in the In-
- a Territory shall exercise the powers of the circuit
- rts of Arkansas under this chapter;
- dower, chapter fifty-two;
- evidence, chapter fifty-nine;
- execution, chapter sixty;
- fees, chapter sixty-three;
- forcible entry and detainer, chapter sixty-seven;
- frauds, statute of, chapter sixty-eight;
- fugitives from justice, chapter sixty-nine;
- gaming contracts, chapter seventy;
- guardians, curators, and wards, chapter seventy-three,
- said court in the Indian Territory shall appoint guar-
- ds and curators;
- habeas corpus, chapter seventy-four;
- injunction, chapter eighty-one;
- insane persons and drunkards, chapter eighty-two,
- said court in the Indian Territory shall exercise the
- rs of the probate courts of Arkansas under this chap-
- ;
- joint and several obligations and contracts, chapter
- ty-seven;
- judgments and decrees, chapter eighty-eight;
- judgments summary, chapter eighty-nine;
- jury, chapter ninety;

to landlord and tenant, chapter ninety-two;
to legal notices and advertisements, chapter ninety-four;
to liens, chapter ninety-six;
to limitations, chapter ninety-seven;
to mandamus and prohibition, chapter one hundred;
to marriage contracts, chapter one hundred and two;
to marriages, chapter one hundred and three;
to married women, chapter one hundred and four;
to money and interest, chapter one hundred and nine;
to mortgages, chapter one hundred and ten;
to notaries public, chapter one hundred and eleven, and
said court in the Indian Territory shall appoint notary
public under this chapter;
to partition and sale of lands, chapter one hundred and
fifteen;
to pleadings and practice, chapter one hundred and nine-
teen;
to recorders, chapter one hundred and twenty-six;
to replevin, chapter one hundred and twenty-eight;
to venue, change of, chapter one hundred and fifty-
three;
and to wills and testaments, chapter one hundred and
fifty five;
and wherever in said laws of Arkansas the courts
record of said State are mentioned the said court in
Indian Territory shall be substituted therefor;
and wherever the clerks of said courts are mentioned
said laws the clerk of said court in the Indian Territory
and his deputies, respectively, shall be substituted there-
for;
and wherever the sheriff of the county is mentioned
said laws the United States marshal of the Indian Terri-
tory shall be substituted therefor, for the purpose, in
of the cases mentioned, of making said laws of Arkansas
applicable to the Indian Territory.

§ 318. **Attachments and Executions.**—That no attachment shall issue against improvements on real estate while the title to the land is vested in any Indian nation, except where such improvements have been made by persons, companies, or corporations operating coal or other mines, railroads, or other industries under lease or permission of law of an Indian national council, or charter, or law of the United States.

That executions upon judgments obtained in any other than Indian courts shall not be void for the sale or conveyance of title to improvements, made upon lands owned by an Indian nation, except in the cases wherein attachments are provided for.

Upon a return of nulla bona, upon an execution upon any judgment against an adopted citizen of any Indian tribe, or again any person residing in the Indian country and not citizen thereof, if the judgment debtor shall be the owner of any improvements upon real estate within the Indian Territory in excess of one hundred and sixty acres occupied as a homestead, such improvements may be subjected to the payment of such judgment by a decree of the court in which such judgment was rendered. Proceedings to subject such property to the payment of judgments may be by petition, of which the judgment debtor shall have notice in the original suit. If on the hearing the court shall be satisfied from the evidence that the judgment debtor is the owner of improvements on real estate, subject to the payment of said judgment, the court may order the same sold, and the proceeds, or so much thereof as may be necessary to satisfy said judgment and costs, applied to the payment of said judgment; or if the improvement is of sufficient rental value to discharge the judgment within a reasonable time the court may appoint a receiver, who shall take charge of the property and apply the rental receipts thereof to the payment of such judgment; under such regulations as the court may prescribe. If under such proceedings any im-

provement is sold only citizens of the tribe in which said property is situate may become the purchaser thereof.

§ 319. **Jurisdiction of Indian Courts.**—The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations shall have the same force and effect in the Indian Territory as elsewhere in the United States;

But nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood, or adoption, are the sole parties, nor so as to interfere with the right or power of said civilized nations to punish said members for violation of the statutes and laws enacted by their national councils where such laws are not contrary to the treaties and laws of the United States.

§ 320. **Making Arkansas Laws Applicable.**—(Sec. 32) That the word "county," as used in any of the laws of Arkansas which are put in force in the Indian Territory by the provisions of this act, shall be construed to embrace the territory within the limits of a judicial division in said Indian Territory; and whenever in said laws of Arkansas the word "county" is used, the words "judicial division" may be substituted therefor, in said Indian Territory, for the purposes of this act.

And whenever in said laws of Arkansas the word "State," or the words "State of Arkansas" are used, the word "Territory," or the words "Indian Territory," may be substituted therefor, for the purposes of this act, and for the purpose of making said laws of Arkansas applicable to the said Indian Territory;

But all prosecutions therein shall run in the name of the "United States."

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§ 321. **Criminal Laws.**—(Sec. 33.) That the provisions chapter forty-five of the said general laws of Arkansas, titled "Criminal law," except as to the crimes and misdemeanors mentioned in the provisos to this section, and the provisions of chapter forty-six of said general laws of Arkansas, entitled "Criminal Procedure," as far as they are applicable, are hereby extended over and put in force in the Indian Territory, and jurisdiction to enforce said provisions is hereby conferred upon the United States court therein:

Provided, That in all cases where the laws of the United States and the said criminal laws of Arkansas have provided for the punishment of the same offenses the laws of the United States shall govern as to such offenses:

§ 322. **Concurrent Jurisdiction.**—**And provided further,** That the United States circuit and district courts, respectively, for the western district of Arkansas and the eastern district of Texas, respectively, shall continue to exercise exclusive jurisdiction as now provided by law in the Indian Territory as defined in this act, in their respective districts as heretofore established, over all crimes and misdemeanors against the laws of the United States applicable to the said Territory, which are punishable by said laws of the United States by death or by imprisonment at hard labor, except as otherwise provided in the following sections of this act.

(Sec. 34.) That original jurisdiction is hereby conferred on the United States court in the Indian Territory to enforce the provisions of title twenty-eight, chapters three and four, of the Revised Statutes of the United States in the Indian Territory, except the offenses defined and embraced in sections twenty-one hundred and forty-two and twenty-one hundred and forty-three:

Provided, That as to the violations of the provisions of section twenty-one hundred and thirty-nine of said Re-

vised Statutes, the jurisdiction of said court in the Indian Territory shall be concurrent with the jurisdiction exercised in the enforcement of such provisions by the United States courts for the western district of Arkansas and the eastern district of Texas:

Provided, That all violations of said chapters three and four, prior to the passage of this act, shall be prosecuted in the said United States courts, respectively, the same as if this act had not been passed.

(Sec. 35.) That exclusive original jurisdiction is hereby conferred upon the United States court in the Indian Territory to enforce the provisions of chapter four, title seventy, of the Revised Statutes of the United States entitled "Crimes against justice," in all cases where the crimes mentioned therein are committed in any judicial proceeding in the Indian Territory and where such crimes affect or impede the enforcement of the laws in the courts established in said Territory:

Provided, That all violations of the provisions of said chapter prior to the passage of this act shall be prosecuted in the United States courts for the western district of Arkansas and the eastern district of Texas, respectively, the same as if this act had not been passed.

§ 323. **Jurisdiction of Controversies Between Citizens and Non-citizens.**—(Sec. 36.) That jurisdiction is hereby conferred upon the United States court in the Indian Territory over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nations in the Indian Territory, and any citizen or member of one tribe or nation who may commit any offense or crime against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Indian Territory as he would be if both parties were citizens of the United States.

ny member or citizen of any Indian tribe or nation Indian Territory shall have the right to invoke the aid court therein for the protection of his person or as against any person not a member of the same nation, as though he were a citizen of the United

Lottery.—(Sec. 37.) That if any person shall, Indian Territory, open, carry on, promote, make or publicly or privately, any lottery, or scheme of of any kind or description, by whatever name, style the same may be denominated or known, or shall, Territory, vend, sell, barter or dispose of any lottery tickets, order or orders, device or devices, of any r, or representing any number of shares or any in any lottery or scheme of chance, or shall open or as owner or otherwise any lottery or scheme of n said Territory, or shall be in any wise concerned ottery or scheme of chance, by acting as owner or said Territory, for or on behalf of any lottery or of chance, to be drawn, paid or carried on, either within said Territory.

such person shall be deemed guilty of a misdeand, on conviction thereof, shall be fined for the use, not exceeding five hundred dollars, and for the offense shall, on conviction, be fined not less than dred dollars and not exceeding five thousand, and be imprisoned, in the discretion of the court, not g one year.

urisdiction to enforce the provisions of this section v conferred upon the United States court in said Territory, and all persons therein, including In-d members and citizens of Indian tribes and na-all be subject to its provisions and penalties.

Clerks to Issue Marriage Licenses—Ex-officio
s.—(Sec. 38.) The clerk and deputy clerks of

said United States court shall have the power within their respective divisions to issue marriage licenses or certificates and to solemnize marriages. They shall keep copies of all marriage licenses or certificates issued by them, and a record book in which shall be recorded all licenses or certificates after the marriage has been solemnized, and all persons authorized by law to solemnize marriages shall return the license or certificate, after executing the same, to the clerk or deputy clerk who issued it, together with the return thereon.

They shall also be ex-officio recorders within their respective divisions, and as such they shall perform such duties as are required of recorders of deeds under the laws of Arkansas, and receive the fees and compensation therefor which are provided in said laws of Arkansas for like service.

§ 326. **Marriage According to Indian Laws.—***Provided* That all marriages heretofore contracted under the laws or tribal customs of any Indian nation now located in the Indian Territory are hereby declared valid, and the issue of such marriages shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of the issue of other forms of lawful marriage:

Provided further, That said chapter one hundred and three of said laws of Arkansas shall not be construed as to interfere with the operation of the laws governing marriage enacted by any of the civilized tribes, nor to confer any authority upon any officer of said court to unite a citizen of the United States in marriage with a member of any of the civilized nations until the preliminaries to such marriage shall have been first arranged according to the laws of the nation of which said Indian person is a member:

And provided further, That where such marriage is required by law of an Indian nation to be of record, the

icate of such marriage shall be sent for record to the
oper officer, as provided in such law enacted by the In-
an nation.

§ 327. **United States Commissioners.**—(Sec. 39.) That
e United States court in the Indian Territory shall have
the powers of the United States circuit courts or circuit
urt judges to appoint commissioners within said Indian
rritory, who shall be learned in the law, and shall be
own as United States commissioners; but not exceeding
ree commissioners shall be appointed for any one divi-
on, and such commissioners when appointed shall have,
ithin the district to be designated in the order appoint-
g them, all the powers of commissioners of circuit courts
the United States.

They shall be ex-officio notaries public, and shall have
ower to solemnize marriages.

The provisions of chapter ninety-one of the said laws of
arkansas, regulating the jurisdiction and procedure be-
re justices of the peace, are hereby extended over the
ndian Territory;

And said commissioners shall exercise all the powers
ffered by the laws of Arkansas upon justices of the
ace within their districts; but they shall have no jurisdic-
tion to try any cause where the value of the thing or
amount in controversy exceeds one hundred dollars.

Appeals may be taken from the final judgment of said
ommissioners to the United States court in said Indian
rritory in all cases and in the same manner that appeals
y be taken from the final judgments of justices of the
ce under the provisions of said chapter ninety-one.

328. **Constables.**—The said court may appoint a con-
le for each of the commissioner's districts designated
the court, and the constable so appointed shall perform
the duties required of constables under the provisions

of chapter twenty-four and other laws of the State of Arkansas.

Each commissioner and constable shall execute to the United States, for the security of the public, a good and sufficient bond, in the sum of five thousand dollars, approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming into his hands, and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him.

The appointments of United States commissioners made by said court held at Muskogee, in the Indian Territory, heretofore made, and all acts in pursuance of law and in good faith performed by them, are hereby ratified and validated.

(Sec. 40.) That persons charged with any offense or crime in the Indian Territory and for whose arrest a warrant has been issued, may be arrested by the United States marshal or any of his deputies, wherever found in said territory, but in all cases the accused shall be taken, for preliminary examination, before the commissioner in the judicial division whose office or place of business is nearest the route usually traveled to the place where the offense or crime was committed; but this section shall apply only to crimes or offenses over which the courts located in the Indian Territory have jurisdiction.

§ 329. **Preliminary Examinations.**—**Provided,** that in cases where persons have been brought before a United States commissioner in the Indian Territory for preliminary examination, charged with the commission of any offense therein, and where it appears from the evidence that a crime has been committed, and that there is probable cause to believe the accused guilty thereof, but that the crime is one over which the courts in the Indian Territory have no jurisdiction, the accused shall not, on that account, be discharged, but the case shall be proceeded with as provided.

on ten hundred and fourteen of the Revised Statutes United States.

Extradition.—(Sec. 41.) That the judge of the States court in the Indian Territory shall have the power to extradite persons who have taken refuge in Indian Territory, charged with crimes in the States or territories of the United States, that may now be extradited by the governor of Arkansas in that State, and he may make requisitions upon governors of States and other territories for persons who have committed offenses in the Indian Territory, and who have taken refuge in such States or territories.

Appeals and Writs of Error.—(Sec. 42.) That appeals and writs of error may be taken and prosecuted from the decisions of the United States court in the Indian Territory to the Supreme Court of the United States in the same manner and under the same regulations as from the courts of the United States, except as otherwise provided in this act.

Indians May Become Citizens of the United States.—(Sec. 43.) That any member of any Indian tribe residing in the Indian Territory may apply to the States court therein to become a citizen of the United States, and such court shall have jurisdiction thereon and shall hear and determine such application as provided in the statutes of the United States.

That the Confederated Peoria Indians residing in the Indian Agency, who have heretofore or who may hereafter accept their land in severalty under any of the laws of the United States, shall be deemed to be, and are hereby declared to be citizens of the United States from and after the selection of their allotments, and entitled to all the rights, privileges, and benefits as such, and are hereby declared from that time to have been



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and to be the legal guardians of their minor ~~children~~
out process of court:

Provided, That the Indians who become citizens of
United States under the provisions of this act do not
feet or lose any rights or privileges they enjoy or are
titled to as members of the tribe or nation to which they
long.

Approved, May 2, 1890.

CHAPTER XXXVII.

ACT MARCH 3, 1893.

Chapt. 209.—An Act making appropriations for current and contingent expenses and fulfilling treaty stipulations with Indian tribes, for fiscal year ending June thirtieth, eighteen hundred and ninety-four. (27 Stat. 612.)

- § 333. Consent of United States to Allotment.**
- 334. Commission to Five Civilized Tribes.**
- 335. Duties of Commission.**
- 336. Sovereignty of United States Not Waived.**

§ 333. Consent of United States to Allotment.—(Sec. 15.) The consent of the United States is hereby given to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; and upon such allotments the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States. And the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated to pay for the survey of any such lands as may be allotted by any of said tribes of Indians to individual members of said tribes; and upon the allotment of the lands held by said tribes respectively the reversionary interests of the United States therein shall be relinquished and shall cease.

§ 334. Commission to Five Civilized Tribes.—(Sec. 16.) The President shall nominate and, by and with the advice and consent of the Senate, shall appoint three commis-

sioners to enter into negotiations with the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation, the Kogee (or Creek) Nation; the Seminole Nation, for the purpose of the extinguishment of the national or tribal title to any lands within that Territory now held by and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes said, or each of them, with the United States, with a view to such an adjustment, upon the basis of justice and equity as may, with the consent of such nations or tribes and Indians, so far as may be necessary, be requisite and sufficient to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory.

The commissioners so appointed shall each receive a salary, to be paid during such time as they may be actually employed, under direction of the President, in the performance enjoined by this act, at the rate of five thousand dollars per annum, and shall also be paid their reasonable proper expenses incurred in prosecution of the objects of this act, upon accounts therefor to be rendered to and allowed by the Secretary of the Interior from time to time. That such commissioners shall have power to employ a secretary, a stenographer, and such interpreter or interpreters as may be found necessary to the performance of the duties, and by order to fix their compensation, which shall be paid, upon the approval of the Secretary of the Interior from time to time, with their reasonable and necessary expenses, upon accounts to be rendered as aforesaid. They may also employ, in like manner and with the like approval, a surveyor or other assistant or agent, which they shall certify in writing to be necessary to the performance of any part of their duties.

§ 335. Duties of Commission.—Such commissioners shall, under such regulations and directions as shall be prescribed by the President, through the Secretary of the Interior, enter upon negotiation with the several nations, of Indians as aforesaid in the Indian Territory, and shall endeavor to procure, first, such allotment of lands in severalty to the Indians belonging to each such nation, tribe, or band, respectively, as may be agreed upon as just and proper to provide for each such Indian a sufficient quantity of land for his or her needs, in such equal distribution and apportionment as may be found just and suited to the circumstances; for which purpose, after the terms of such an agreement shall have been arrived at, the said commissioners shall cause the lands of any such nation or tribe or band to be surveyed and the proper allotment to be designated: and, secondly, to procure the cession, for such price and upon such terms as shall be agreed upon, of any lands not found necessary to be so allotted or divided, to the United States; and to make proper agreements for the investment or holding by the United States of such moneys as may be paid or agreed to be paid to such nation or tribes or bands, or to any of the Indians thereof, for the extinguishment of their ——— therein. But said commissioners shall, however, have power to negotiate any and all such agreements as, in view of all the circumstances affecting the subject, shall be found requisite and suitable to such an arrangement of the rights and interests and affairs of such nations, tribes, bands, or Indians, or any of them, to enable the ultimate creation of a Territory of the United States with a view to the admission of the same as a State in the Union.

The commissioners shall at any time, or from time to time, report to the Secretary of the Interior their transactions and the progress of their negotiations, and shall at any time, or from time to time, if separate agreements shall be made by them with any nation, tribe or band, in pursuance of the authority hereby conferred, report the same

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to the Secretary of the Interior for submission to Congress for its consideration and ratification.

For the purposes aforesaid there is hereby appropriated, out of any money in the Treasury of the United States, the sum of fifty thousand dollars, to be immediately available.

§ 336. Sovereignty of the United States Not Waived.—Neither the provisions of this section nor the negotiations or agreements which may be had or made thereunder shall be held in any way to waive or impair any right of sovereignty which the Government of the United States has over or respecting said Indian Territory or the people thereof, or any other right of the Government relating to said Territory, its lands, or the people thereof.

Approved, March 3, 1893.

CHAPTER XXXVIII.

ACT MARCH 1, 1895.

Chapt. 145.—An Act to provide for the appointment of additional judges of the United States Court in the Indian Territory, and for other purposes. (28 Stat. 693.)

- § 337. Three Judicial Divisions Created.**
- 338. Additional Judges Appointed.**
- 339. Venue.**
- 340. Jurisdiction of United States Courts.**
- 341. No Prior Acts Repealed.**

§ 337. Three Judicial Divisions Created.—That the territory known as the Indian Territory, now within the jurisdiction of the United States court in said Territory, is hereby divided into three judicial districts, to be known as the northern, central, and southern districts.

and at least two terms of the United States court in the Indian Territory shall be held each year at each place of holding court in each district at such regular times as the judge for such district shall fix and determine.

The northern district shall consist of all the Creek country, all of the Seminole country, all of the Cherokee country, all of the country occupied by the Indian tribes in the Quapaw Indian Agency, and the town site of the Miami Town-site Company, and the places of holding courts in said district shall be at Vinita, Miami, Tahlequah, and Muscogee.

The central district shall consist of all the Choctaw country, and the places of holding courts in said district shall be at South McAlister, Atoka, Antlers, and Cameron.

The southern district shall consist of all the Chickasaw country, and the places of holding courts in said district shall be at Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha.

§ 338. **Additional Judges Appointed.**—(Sec. 2.) There shall be appointed by the President, by and with the advice and consent of the Senate, two additional judges of the United States court in said Indian Territory, who shall hold their respective offices for the term of four years from the date of their appointment, unless sooner removed as provided by law, one of whom shall be the judge of the northern district and the other shall be the judge of the southern district; and the judge of the United States court now in office shall, from and after said appointment, be the judge of the central district, and shall hold his office for the term for which he was appointed, and during the period of their service said judges shall reside in the judicial districts for which they are appointed; and said judges of the northern and southern districts shall each take the oath of office required by law to be taken by the judges of the district courts of the United States.

§ 339. **Venue.**—(Sec. 7.) That all prosecutions for crimes or offenses of which the United States court in the Indian Territory shall have jurisdiction, shall be had within the district in which said offense shall have been committed, and in the court nearest or most convenient to the locality where it is committed, to be determined by the judge on motion to transfer the trial of the case from one court to another.

All civil suits shall be brought in the district in which the defendant or defendants reside or may be found; and if there are two or more defendants residing in different districts the action may be brought in any district in which either of the defendants may reside or be found; and if the plaintiff is a resident, in the court nearest to his residence.

All cases shall be tried in the court to which the process is returnable, unless a change of venue is allowed, in which case the court shall change the venue to the nearest place of holding court, within the district, and any civil case

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may be removed to another district for trial if the court shall so order, on the application of either party.

§ 340. Jurisdiction of United States Courts.—(Sec. 9.) That the United States court in the Indian Territory shall have exclusive original jurisdiction of all offenses committed in said Territory of which the United States court in the Indian Territory now has jurisdiction, and after the first day of September, eighteen hundred and ninety-six, shall have exclusive original jurisdiction of all offenses against the laws of the United States, committed in said Territory, except such cases as the United States court at Paris, Texas, Fort Smith, Arkansas, and Fort Scott, Kansas, shall have acquired jurisdiction of before that time; and shall have such original jurisdiction of civil cases as is now vested in the United States court in the Indian Territory,

and appellate jurisdiction of all cases tried before said commissioners, acting as justices of the peace, where the amount of the judgment exceeds twenty dollars.

§ 341. No Prior Acts Repealed.—(Sec. 13.) That none of the provisions of any other acts, or of any of the laws of the United States, or of the State of Arkansas, heretofore put in force in said Indian Territory, except so far as they come in conflict with the provisions of this act, are intended to be repealed, or in any manner affected by this act, but all such acts and laws are to remain in full force and effect in said Territory.

Approved, March 1, 1895.

CHAPTER XXXIX.

ACT JUNE 10, 1896.

Chap. 398—An Act making appropriations for current contingent expenses of the Indian Department fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, and for other purposes. (29 Stat. 321.)

- § 342. Commission to Hear Applications for Enrollment.
- 343. Existing Rolls Confirmed.
- 344. Commission to Issue Process, etc.
- 345. Commission to Make Roll of Citizens.
- 346. Commission to Make Roll of Freedmen.
- 347. Declared to Be Duty of United States to Establish Sult Government.

§ 342. **Commission to Hear Applications for Enrollment.**—For salaries and expenses of the Commissioners appointed under Acts of Congress, approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, the sum of forty thousand dollars, to be immediately available; and said commission is directed to continue the exercise of the authority already conferred upon them by law and endeavor to accomplish the objects heretofore presented to them and report from time to time to Congress.

That said commission is further authorized and directed to proceed at once to hear and determine the applications of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled:

Provided, however, That such application shall be made such Commissioners within three months after the passage of this Act.

The said commission shall decide all such applications within ninety days after the same shall be made.

That in determining all such applications said commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give the force and effect to the rolls, usages, and customs of each of said nations or tribes.

§ 343. **Existing Rolls Confirmed.**—And provided, further, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who may claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has never been denied or not acted upon, or any citizen who may within three months from and after the passage of this Act desire such citizenship, may apply to the legally constituted court or committee designated by the several laws for such citizenship, and such court or committee shall determine such application within thirty days from date thereof.

344. **Commission to Issue Process, Etc.**—In the performance of such duties said commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever heretofore taken where witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter

held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes:

Provided, That if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the commission provided for in this Act, it or he may appeal from such decision to the United States district court:


Provided, however, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

§ 345. **Commission to Make Roll of Citizens.**—That the said commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this Act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

The commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as the final judgment of the duly constituted authorities.

§ 346. **Commission to Make Roll of Freedmen.**—And said commission shall also make a roll of freedmen entitled to citizenship in said tribes and shall include their names in the lists of members to be filed with the Commissioner of Indian Affairs.

And said commission is further authorized and directed to make a full report to Congress of leases, tribal and individual, with the area, amount and value of the property leased and the amount received therefor, and by whom and from whom said property is leased, and is further directed to make a full and detailed report as to the excessive holdings of members of said tribes and others.



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347. Declared to Be Duty of United States to Establish Suitable Government.—It is hereby declared to be the duty of the United States to establish a government in the Hawaiian Territory which will rectify the many inequalities and discriminations now existing in said Territory and afford needful protection to the lives and property of all persons and residents thereof.

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be open to investigation by such commission for a period of six months after the passage of this Act. And any ~~appearing~~ on such rolls and not confirmed by the Act of June tenth, eighteen hundred and ninety-six, as herein ~~may~~ be stricken therefrom by such ~~commission~~ the party affected shall have ten days previous to the time said commission will investigate and determine if such party to remain upon such roll as a citizen of said nation.

~~Provided also~~ That any one whose name shall be ~~on the roll~~ by such commission shall have the ~~same~~ as provided in the Act of June tenth, eighteen hundred and ninety-six.

~~That~~ Acts, Ordinances, etc., of Indian Nations ~~shall be approved~~—That on and after January first, ~~thousand eight hundred and ninety-eight~~, all acts, ordinances, ~~of the council of either of the aforesaid~~ ~~shall be referred immediately upon their~~ President of the United States and shall ~~be disapproved by him or until thirty day~~

~~Provided~~ That this Act shall not apply to ~~any~~ ~~agreements~~ or any acts or resolutions, or ~~any~~ ~~negotiations~~ with commissioners ~~of the~~ ~~tribes~~ to treat with said tribes.

~~Section~~ Additional Judge Appointed.—That ~~the~~ ~~President~~ by and with ~~the~~ ~~Senate~~ one additional judge ~~shall be appointed~~ ~~for the~~ ~~appellate court of said Territory~~ ~~in the several judicial districts~~ ~~at the times when such judge shall hold~~ ~~at the places now provided~~

and the United States commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said Territory.

§ 350. **Laws Applicable to Indians.**—And the laws of the United States and the State of Arkansas in force in the Territory shall apply to all persons therein, irrespective of race, said courts exercising jurisdiction thereof as now conferred upon them in the trial of like causes;

and any citizen of any one of said tribes otherwise qualified who can speak and understand the English language may serve as a juror in any of said courts.

§ 351. **Treaty to Suspend Act.**—That said commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provision of this Act if it conflict therewith as to said nation.

§ 352. **Definition of "Rolls of Citizenship."**—**Provided,** That the words "rolls of citizenship," as used in the Act of June tenth, eighteen hundred and ninety-six, making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, or duly authorized courts thereof, or the commission under the Act of June tenth, eighteen hundred and ninety-six. And all other names appearing upon such rolls shall

be open to investigation by such commission for a period of six months after the passage of this Act. And any name appearing on such rolls and not confirmed by the Act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such commission where the party affected shall have ten days previous notice that said commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation:

Provided, also, That any one whose name shall be stricken from the roll by such commission shall have the right of appeal, as provided in the Act of June tenth, eighteen hundred and ninety-six.

§ 353. **Acts, Ordinances, etc., of Indian Nations Subject to Disapproval.**—That on and after January first, eighteen hundred and ninety-eight, all acts, ordinances, and resolutions of the council of either of the aforesaid Five Tribes passed shall be certified immediately upon their passage to the President of the United States and shall not take effect, if disapproved by him, or until thirty days after their passage:

Provided, That this Act shall not apply to resolutions for adjournment, or any acts, or resolutions, or ordinances in relation to negotiations with commissioners heretofore appointed to treat with said tribes.

§ 354. **Additional Judge Appointed.**—That there shall be appointed by the President, by and with the advice and consent of the Senate, one additional judge for said Territory

and the appellate court of said Territory shall designate the places in the several judicial districts therein at which and the times when such judge shall hold court, and court shall be held at the places now provided by law and at the

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own of Wagoner and at such other places as shall be designated by said appellate court;

and said judge shall be a member of the appellate court, and shall have all authority, exercise all powers, perform like duties, and receive the same salary as other judges of said courts, and shall serve for a term of four years from the date of appointment:

Provided, That no one of said judges shall sit in the hearing of any case in said appellate court which was decided by him. . . .

§ 355. **Survey.**—For completion of the survey of the lands in the Indian Territory, one hundred thousand dollars, or so much thereof as may be necessary, to be immediately available: **Provided,** That the surveys herein authorized, or any part of them in the Indian Territory, shall be made under the supervision of the Director of the Geological Survey by such persons as may be employed by or under him for that purpose; and such surveys shall be executed under instructions to be issued by the Secretary of the Interior, and subdivisional surveys shall be executed under the rectangular system, as now provided by law: **Provided, further,** That when any surveys shall have been so made and plats and field notes thereof prepared, they shall be approved and certified by the Director of the Geological Survey, and two copies thereof shall be returned, one for filing in the Indian Office and one in the General Land Office; and such surveys, field notes, and plats shall have the same legal force and effect as heretofore given to the acts of surveyors-general: **Provided further,** That all laws inconsistent with the provisions hereof are hereby declared to be inoperative as respects such surveys.

For resurveys of the lands of the Chickasaw Nation, Indian Territory, one hundred and forty-one thousand, five hundred dollars, to be immediately available: **Provided,** That such resurveys shall be made under the supervision

of the Director of the Geological Survey by such persons as may be employed by or under him for that purpose; and such surveys shall be executed under instructions to be issued by the Secretary of the Interior, and subdivisional surveys shall be executed under the rectangular system, as now provided by law: **Provided further,** That when any surveys shall have been so made and plats and field notes thereof prepared they shall be approved and certified to by the Director of the Geological Survey, and two copies of the field notes shall be returned, one for filing in the Indian Office and one in the General Land Office, and twenty photolithographic copies of the plats shall be returned, one for filing in the Office of Indian Affairs and one in the General Land Office, which shall be certified to by the Director of the Geological Survey, and the others filed in the General Land Office; with the facsimile of the signature of the Director of the Geological Survey; and the same provision shall also extend to the plats to be filed of the surveys already made or to be made under the supervision of the Director of the Geological Survey within the Indian Territory, and such surveys, field notes, and plats shall have the same legal force and effect as heretofore given to the acts of surveyors-general: **Provided further,** That all laws inconsistent with the provisions hereof are hereby declared to be inoperative as respects such surveys, and in making the resurvey the former land survey is to be disregarded, the latter now being declared null and void: **Provided further,** That hereafter in the public-land surveys of the Indian Territory iron or stone posts shall be erected at each township corner, upon which shall be recorded the usual marks required to be placed on township corners by the laws and regulations governing public-land surveys.

CHAPTER XLI.

ACT JUNE 28, 1898.

1. 517.—An Act for the protection of the people of the Indian Territory, and for other purposes. (30 Stat. 495.)

- . The Word "Officer" Defined.
- . Any Tribe May Be Made Party to Suit.
- . Jurisdiction When Tribal Membership Denied.
- . Non-citizen in Possession.
- . Improvements Under Claim of Right of Citizenship.
- . Notice to Adverse Party.
- . Sworn Complaint to Be Filed.
- . Continuance.
- . Execution Upon Judgment of Restitution.
- . Police Jurisdiction of City of Fort Smith.
- . Action to Be Brought Within Two Years.
- . Allotment of Exclusive Use and Occupancy.
- . Intruders.
- . Restrictions.
- . Lands for Public Purposes by Condemnation.
- . Peaceful Possession of Allottee.
- . Coal, Oil and Asphalt Leases.
- . Incorporation of Towns.
- . Townsite Commission.
- . Owner of Improvements May Purchase Lots.
- . Unimproved Lots to Be Sold.
- . Parks, Cemeteries, etc.
- . Deeds to Town Lots.
- . Lots Reserved for Coal Miners.
- . Rents, Royalties, etc., to Belong to Tribe.
- . Only Land Intended for Allotment to Be Enclosed.
- . Penalty.
- . Per Capita Payment to Be Made by Officer of United States.
- . Commission to Employ Assistants.
- . Cherokee Roll of 1880 Confirmed.
- . Roll of Cherokee Freedmen.
- . Rolls of Other Tribes.
- . Identity of Mississippi Choctaws.
- . Roll of Creek Freedmen.



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- 390. Roll of Choctaw Freedmen.
- 391. Roll of Chickasaw Freedmen.
- 392. Citizenship in More Than One Tribe.
- 393. Mississippi Choctaws Excepted.
- 394. Rolls to Be Made Descriptive of the Persons.
- 395. Rolls to Be Final.
- 396. Commission to Have Inquisitorial Powers.
- 397. Settlement Upon Lands of Other Tribes.
- 398. Agricultural Leases.
- 399. Tribal Monies.
- 400. Segregation of Land for Registered Delawares.
- 401. Delaware Indians Empowered to Bring Suit.
- 402. Laws of Various Tribes Not Enforceable.
- 403. Indian Inspector.
- 404. Tribal Courts Abolished.
- 405. Atoka Agreement.
- 405a. Pertaining to Creek Agreement.

§ 356. **The Word "Officer" Defined.**—That in all criminal prosecutions in the Indian Territory against officers for embezzlement, bribery, and embracery the word "officer," when the same appears in the criminal laws heretofore extended over and put in force in said Territory, shall include all officers of the several tribes or nations of Indians in said Territory.

§ 357. **Any Tribe May Be Made Party to Suit.**—(2.) That when in the progress of any civil suit, either at law or equity, pending in the United States court in any district in said Territory, it shall appear to the court that the property of any tribe is in any way affected by the issues being heard, said court is hereby authorized and required to make said tribe a party to said suit by serving upon the chief or governor of the tribe, and the suit thereafter be conducted and determined as if said tribe had been an original party to said action.

§ 358. **Jurisdiction Where Tribal Membership Determined.**—(Sec. 3.) That said courts are hereby given jurisdiction in their respective districts to try cases against those

may claim to hold as members of a tribe and whose membership is denied by the tribe, but who continue to hold said lands and tenements notwithstanding the objection of the tribe; and if it be found upon trial that the same are held unlawfully against the tribe by those claiming to be members thereof, and the membership and right are disallowed by the commission to the Five Tribes, or the United States court, and the judgment has become final, then said court shall cause the parties charged with unlawfully holding said possessions to be removed from the same and cause the lands and tenements to be restored to the person or persons or nation or tribe of Indians entitled to the possession of the same.

§ 359. **Non-citizen in Possession.**—Provided always, that any person being a non-citizen in possession of lands, holding the possession thereof under an agreement, lease, or improvement contract with either of said nations or tribes, or any citizen thereof, executed prior to January first, eighteen hundred and ninety-eight, may, as to lands not exceeding in amount one hundred and sixty acres, in defense of any action for the possession of said lands show that he is and has been in peaceable possession of such lands, and that he has while in such possession made lasting and valuable improvements thereon, and that he has not enjoyed the possession thereof a sufficient length of time to compensate him for such improvements. Thereupon the court or jury trying said cause shall determine the fair and reasonable value of such improvements and the fair and reasonable rental value of such lands for the time the same shall have been occupied by such person, and if the improvements exceed in value the amount of rents with which such persons should be charged the court, in its judgment, shall specify such time as will, in the opinion of the court, compensate such person for the balance due, and award him possession for such time unless the amount be paid by claimant within such reasonable time as the court shall specify.



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If the finding be that the amount of rents exceed the value of the improvements, judgment shall be rendered against the defendant for such sum, for which execution may be issued.

§ 360. **Improvement Under Claim of Right of Citizenship.**—(Sec. 4.) That all persons who have heretofore made improvements on lands belonging to any one of the tribes of Indians, claiming rights of citizenship, whose claims have been decided adversely under the Act of Congress approved June tenth, eighteen hundred and ninety-six, and who have possession thereof until and including December thirtieth first, eighteen hundred and ninety-eight; and may, prior to that time, sell or dispose of the same to any member of the tribe owning the land who desires to take the same in the next allotment:

Provided, That this section shall not apply to improvements which have been appraised and paid for or payment tendered by the Cherokee Nation under the agreement with the United States approved by Congress March third, eighteen hundred and ninety-three.

§ 361. **Notice to Adverse Party.**—(Sec. 5.) That before any action by any tribe or person shall be commenced under section three of this Act it shall be the duty of the plaintiff in bringing the same to notify the adverse party to leave the premises for the possession of which the action is about to be brought, which notice shall be served at least thirty days before commencing the action by leaving a written copy of the notice to the defendant, or, if he cannot be found, by leaving the same at his last known place of residence or business with any person occupying the premises over the age of twelve years, or, if his residence or business address cannot be ascertained, by leaving the same with any person over the age of twenty years upon the premises sought to be recovered and described in said notice; and if there be no person with whom said notice can be left, then by posting same on the premises.

§ 362. **Sworn Complaint to Be Filed.**—(Sec. 6.) That no summons shall not issue in such action until the chief or governor of the tribe, or person or persons bringing suit in their own behalf, shall have filed a sworn complaint, on behalf of the tribe or himself, with the court, which shall, as near as practicable, describe the premises so detained, and shall set forth a detention without the consent of the person bringing said suit or the tribe, by one whose membership is denied by it:

Provided, That if the chief or governor refuse or fail to bring suit in behalf of the tribe, then any member of the tribe may make complaint and bring said suit.

§ 363. **Continuance.**—(Sec. 7.) That the court in granting a continuance of any case, particularly under section three, may, in its discretion, require the party applying therefor to give an undertaking to the adverse party, with good and sufficient securities, to be approved by the judge of the court, conditioned for the payment of all damages and costs and defraying the rent which may accrue if judgment be rendered against him.

§ 364. **Execution Upon Judgment of Restitution.**—(Sec. 8.) That when a judgment for restitution shall be entered by the court the clerk shall, at the request of the plaintiff or his attorney, issue a writ of execution thereon, which shall command the proper officer of the court to cause the defendant or defendants to be forthwith removed and ejected from the premises and the plaintiff given complete and undisturbed possession of the same. The writ shall also command the said officer to levy upon the property of the defendant or defendants subject to execution, and also collect therefrom the costs of the action and all accruing costs in the service of the writ. Said writ shall be executed within thirty days.

§ 365. **Police Jurisdiction of City of Fort Smith.**—(Sec.



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9.) That the jurisdiction of the court and municipal authority of the city of Fort Smith for police purposes in the State of Arkansas is hereby extended over all that strip of land in the Indian Territory lying and being situated between the corporate limits of the said city of Fort Smith and the Arkansas and Poteau rivers, and extending up the said Poteau River to the mouth of Mill Creek; and all the laws and ordinances for the preservation of the peace and health of the city, as far as the same are applicable, are hereby put in force therein:

Provided, That no charge or tax shall ever be made or levied by said city against said land or the tribe or nation to whom it belongs.

§ 366. **Action to Be Brought Within Two Years.**—(10.) That all actions for restitution of possession of property under this Act must be commenced by the service of a summons within two years after the passage of this Act, where the wrongful detention or possession began prior to the date of its passage; and all actions which shall be commenced hereafter, based upon wrongful detention or possession committed since the passage of this Act must be commenced within two years after the cause of action accrued. And nothing in this Act shall take away the right to maintain an action for unlawful and forcible entry and detainer given by the Act of Congress passed May second eighteen hundred and ninety (Twenty-sixth United States Statutes, page ninety-five).

§ 367. **Allotment of Exclusive Use and Occupancy.** (Sec. 11.) That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is completed, the commission heretofore appointed under authority of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible

allotment among the citizens thereof, as shown by said roll, making to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits; and all townships shall also be reserved to the several tribes, and shall be set apart by the commission heretofore mentioned as incapable of allotment. There shall also be reserved from allotment a sufficient amount of lands now occupied by churches, schools, parsonages, charitable institutions, and other public buildings for their present actual and necessary use, and no more, not to exceed five acres for each school and one acre for each church and each parsonage, and for such new schools as may be needed; also sufficient land for burial grounds where necessary. When such allotment of the lands of any tribe has been by them completed, said commission shall make a full report thereof to the Secretary of the Interior for his approval:

Provided, That nothing herein contained shall in any way affect any vested legal rights which may have been heretofore granted by Act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any such Act of Congress:

Provided further, That whenever it shall appear that any member of a tribe is in possession of lands, his allotment may be made out of the lands in his possession, including his home if the holder so desires:

§ 368. **Intruders.**—**Provided further,** That if the person to whom an allotment shall have been made shall be declared, upon appeal as herein provided for, by any of the courts of the United States in or for the aforesaid Territory, to have been illegally accorded rights of citizenship, and for that or any other reason declared to be not entitled to any



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allotment, he shall be ousted and ejected from said land; that all persons known as intruders who have been paid for their improvements under existing laws and have not rendered possession thereof who may be found under the provisions of this Act to be entitled to citizenship, within ninety days thereafter, refund the amount so paid them, with six per centum interest, to the tribe entitled thereto; and upon their failure so to do said amount shall become a lien upon all improvements owned by such person in such Territory, and may be enforced by such tribe; unless such person makes such restitution no allotments shall be made to him:

§ 369. **Restrictions.**—**Provided** further, That the lands allotted shall be nontransferable until after full title is acquired and shall be liable for no obligations contracted prior thereto by the allottee, and shall be nontaxable while held:

§ 370. **Lands for Public Purposes by Condemnation.** **Provided** further, That all towns and cities heretofore incorporated or incorporated under the provisions of this Act are hereby authorized to secure, by condemnation or otherwise, all the lands actually necessary for public improvements, regardless of tribal lands; and when the same cannot be secured otherwise than by condemnation, then the same may be acquired as provided in sections nine hundred seven and nine hundred and twelve, inclusive, of Mansfield's Digest of the Statutes of Arkansas.

§ 371. **Peaceful Possession of Allottee.**—(Sec. 12.) When reports of allotments of lands of any tribe shall be made to the Secretary of the Interior, as hereinbefore provided, he shall make a record thereof, and when he shall confirm such allotments the allottees shall remain in peaceful and undisturbed possession thereof, subject to the provisions of this Act.

372. Coal, Oil and Asphalt Leases.—(Sec. 13.) That Secretary of the Interior is hereby authorized and directed from time to time to provide rules and regulations in regard to the leasing of oil, coal, asphalt, and other minerals in said Territory, and all such leases shall be made by Secretary of the Interior; and any lease for any such minerals otherwise made shall be absolutely void. No lease shall be made or renewed for a longer period than fifteen years, nor cover the mineral in more than six hundred and forty acres of land, which shall conform as nearly as possible to the surveys. Lessees shall pay on each oil, coal, asphalt, or other mineral claim at the rate of one hundred dollars per annum, in advance, for the first and second years; two hundred per annum, in advance, for the third and fourth years, and five hundred dollars, in advance, for each succeeding year thereafter, as advanced royalty on the mine or claim on which they are made. All such payments shall be a credit on royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advanced payments; and all lessees must pay said annual advanced payments on each claim, whether developed or undeveloped; and should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance shall then become and be the money and property of the tribe. Where any oil, coal, asphalt, or other mineral is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land, by the lessee or party operating the same, before operations begin:

Provided, That nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any

oil, coal rights, asphalt, or mineral which have been as to by Act of Congress, but all such interest shall co-
unimpaired thereby, and shall be assured to such hold-
owners by leases from the Secretary of the Interior for
term not exceeding fifteen years, but subject to pay-
advanced royalties as herein provided, when such lease
not operated, to the rate of royalty on coal mined, and
rules and regulations to be prescribed by the Secretary
the Interior, and preference shall be given to such parties
in renewals of such leases:

And provided further, That when, under the custom
laws heretofore existing and prevailing in the Indian
territory, leases have been made of different groups or parcels
of oil, coal, asphalt, or other mineral deposits, and posses-
sion has been taken thereunder and improvements made for
the development of such oil, coal, asphalt, or other mineral
deposits, by lessees or their assigns, which have resulted
in the production of oil, coal, asphalt, or other mineral
in commercial quantities by such lessees or their assigns,
then such parties in possession shall be given preference
the making of new leases, in compliance with the direction
of the Secretary of the Interior; and in making new leases
due consideration shall be made for the improvements of
such lessees, and in all cases of the leasing or renewing
leases of oil, coal, asphalt, and other mineral deposits, prefer-
ence shall be given to parties in possession who have made
improvements. The rate of royalty to be paid by all parties
shall be fixed by the Secretary of the Interior.

§ 373. **Incorporation of Towns.**—(Sec. 14.) That the
habitants of any city or town in said Territory having
hundred or more residents therein may proceed, by petition
to the United States court in the district in which such
city or town is located, to have the same incorporated as
provided in chapter twenty-nine of Mansfield's Digest of
Statutes of Arkansas, if not already incorporated there-
under; and the clerk of said court shall record all papers

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in all the acts required of the recorder of the county, clerk of the county court, or the secretary of state, for the incorporation of any city or town as provided in Mansfield's Digest, and such city or town government when so authorized and organized, shall possess all the powers and exercise all the rights of similar municipalities in the State of Arkansas. All male inhabitants of such cities and towns over the age of twenty-one years, who are citizens of the United States or of either of said tribes, who have resided therein more than six months next before any election held under this Act, shall be qualified voters at such election. That mayors of such cities and towns, in addition to their other powers, shall have the same jurisdiction in all civil and criminal cases arising within the corporate limits of such cities and towns as, and coextensive with, United States commissioners in the Indian Territory, and may collect, and retain the same fees as such commissioners now collect and account for to the United States; the marshal or other executive officer of such city or town may execute all processes issued in the exercise of the jurisdiction hereby conferred, and charge and collect the fees for similar services, as are allowed to constables under the laws now in force in said Territory. Elections shall be conducted under the provisions of Article fifty-six of said digest, entitled "Elections," so far as the same may be applicable; and all inhabitants of such cities and towns, without regard to race, shall be subject to the laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection. Such city or town governments shall in no case have any authority to impose upon or levy any tax against lands in said cities or towns until after title is secured from the tribe; but all other property, including all improvements on town lots, which for the purposes of this Act shall be deemed and considered personal property, together with franchises and privileges, shall be subject to taxation. The councils of such cities and towns, for the support

of the same and for school and other public purposes, and provide by ordinance for the assessment, levy, and collection annually of a tax upon such property, not to exceed the aggregate two per centum of the assessed value therein manner provided in chapter one hundred and twenty-nine of said digest, entitled "Revenue," and for such purposes may also impose a tax upon occupations and privileges.

Such councils may also establish and maintain free schools in such cities and towns, under the provisions of sections sixty-two hundred and fifty-eight to sixty-two hundred and seventy-six, inclusive, of said digest, and may exercise the powers conferred upon special school districts in cities and towns in the State of Arkansas by the laws of said State when the same are not in conflict with the provisions of this Act.

For the purposes of this section all the laws of said State of Arkansas herein referred to, so far as applicable, hereby put in force in said Territory; and the United States Court therein shall have jurisdiction to enforce the same and to punish any violation thereof, and the city or town councils shall pass such ordinances as may be necessary for the purpose of making the laws extended over them applicable to them and for carrying the same into effect:

Provided, That nothing in this Act, or in the laws of the State of Arkansas, shall authorize or permit the sale, or exposure for sale, of any intoxicating liquor in said Territory or the introduction thereof into said Territory; and it shall be the duty of the district attorneys in said Territory, the officers of such municipalities to prosecute all violations of the laws of the United States relating to the introduction of intoxicating liquors into said Territory, or to their sale or exposure for sale, therein:

Provided further, That owners and holders of leases and improvements in any city or town shall be privileged to transfer the same.

374. Town Site Commission.—(Sec. 15.) That there shall be a commission in each town for each one of the Chickaw, Choctaw, Creek, and Cherokee tribes, to consist of one member to be appointed by the executive of the tribe, who shall not be interested in town property, other than his own; one person to be appointed by the Secretary of the Interior, and one member to be selected by the town. And if the executive of the tribe or the town fail to select members as aforesaid, they may be selected and appointed by the Secretary of the Interior.

Said commissions shall cause to be surveyed and laid out town sites where towns with a present population of two hundred or more are located, conforming to the existing survey so far as may be, with proper and necessary streets, ditches, and public grounds, including parks and cemeteries, reserving to each town such territory as may be required for present needs and reasonable prospective growth; and shall prepare correct plats thereof, and file one with the Secretary of the Interior, one with the clerk of the United States Court, one with the authorities of the tribe, and one with the town authorities. And all town lots shall be appraised by said commission at their true value, excluding improvements; and separate appraisements shall be made of improvements thereon; and no such appraisal shall be effective until approved by the Secretary of the Interior, and in case of disagreement by the members of such commission as to the value of any lot, said Secretary may fix the value thereof.

375. Owner of Improvements May Purchase Lots.—The owner of the improvements upon any town lot, other than a fencing, tillage, or temporary buildings, may deposit with the United States Treasury, Saint Louis, Missouri, one-tenth of such appraised value; ten per centum within two months and fifteen per centum more within six months after the date of appraisal, and the remainder in three equal annual installments thereafter, depositing with the Secretary



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of the Interior one receipt for each payment, and one to the authorities of the tribe, and such deposit shall be deemed a tender to the tribe of the purchase money for such

If the owner of such improvements on any lot fail to make deposit of the purchase money as aforesaid, then such lot may be sold in the manner herein provided for the sale of unimproved lots; and when the purchaser thereof has complied with the requirements herein for the purchase of improved lots he may, by petition, apply to the United States court within whose jurisdiction the town is located for condemnation and appraisement of such improvements, and the petitioner shall, after judgment, deposit the value so ascertained with the clerk of the court; and thereupon the defendant shall be required to accept same in full payment for such improvements or remove same from the lot within such time as may be fixed by the court.

§ 376. **Unimproved Lots to Be Sold.**—All town lots not improved as aforesaid shall belong to the tribe, and shall be in like manner appraised, and, after approval by the Secretary of the Interior, and due notice, sold to the highest bidder at public auction by said commission, but not for less than their appraised value, unless ordered by the Secretary of the Interior; and purchasers may in like manner make deposits of the purchase money with like effect, as in case of improved lots.

§ 377. **Parks, Cemeteries, Etc.**—The inhabitants of any town may, within one year after the completion of the survey thereof, make such deposit of ten dollars per acre for parks, cemeteries, and other public grounds laid out by said commission with like effect as for improved lots; and no parks and public grounds shall not be used for any purpose until such deposits are made.

§ 378. **Deeds to Town Lots.**—The person authorized by the tribe or tribes may execute or deliver to any such

without expense to him, a deed conveying to him to such lands or town lots; and thereafter the purchase money shall become the property of the tribe; and all moneys shall, when titles to all the lots in the towns going to any tribe have been thus perfected, be paid out to the members of the tribe:

Lots Reserved for Coal Miners.—Provided, however, that in those town sites designated and laid out under the provisions of this Act where coal leases are now being mined and coal is being mined there shall be reserved for the use and praisement and sale all lots occupied by houses of persons actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land to be determined by the appraisers, to furnish homes for persons actually engaged in working for the lessees of the said mines and a sufficient amount for all buildings necessary for mining purposes:

Provided further, That when the lessees shall cease to work the said mines, then, and in that event, the lots so reserved shall be disposed of as provided for in this Act.

Rents, Royalties, etc., to Belong to Tribes.—(Section 381.) That it shall be unlawful for any person, after the passage of this Act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of anyone else, any royalty on oil, coal, asphalt, or other mineral, or on timber or lumber, or any other kind of property whatsoever, or any rents on any lands or property belonging to the members of said tribes or nations in said Territory, or for the purpose of paying to any individual any such royalty or rents or consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under the rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States for the credit of the tribe to which they belong:

Provided, That where any citizen shall be in possession of only such amount of agricultural or grazing lands as would be his just and reasonable share of the lands of his nation or tribe and that to which his wife and minor children are entitled, he may continue to use the same or receive the rents thereon until allotment has been made to him:

Provided further, That nothing herein contained shall impair the rights of any member of a tribe to dispose of any timber contained on his, her, or their allotment.

§ 381. **Only Land Intended for Allotment to Be Inclosed.** (Sec. 17.) That it shall be unlawful for any citizen of any one of said tribes to inclose or in any manner, by himself or through another, directly or indirectly, to hold possession of any greater amount of lands or other property belonging to any such nation or tribe than that which would be his approximate share of the lands belonging to such nation or tribe and that of his wife and his minor children as per allotment herein provided; and any person found in such possession of lands or other property in excess of his share and that of his family, as aforesaid, or having the same in any manner inclosed, at the expiration of nine months after the passage of this Act, shall be deemed guilty of a misdemeanor.

§ 382. **Penalty.**—(Sec. 18.) That any person convicted of violating any of the provisions of sections sixteen and seventeen of this Act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist shall be deemed a separate offense.

And the United States district attorneys in said Territory

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quired to see that the provisions of said sections are enforced and they shall at once proceed to dispose of persons of such excessive holding of lands and to return them for so unlawfully holding the same.

3. Per Capita Payments to Be Made by Officer of States.—(Sec. 19.) That no payment of any moneys on account whatever shall hereafter be made by the States to any of the tribal governments or to any thereof for disbursement, but payments of all sums due to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

4. Commission to Employ Assistants.—(Sec. 20.) The commission hereinbefore named shall have authority to employ, with approval of the Secretary of the Interior, such assistance necessary for the prompt and efficient performance of all duties herein imposed, including competent surveyors to make allotments, and to do any other necessary work, and the Secretary of the Interior may detail competent clerks to aid them in the performance of their duties.

5. Cherokee Roll of 1880 Confirmed.—(Sec. 21.) In making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of 1880 as the only roll intended to be confirmed by this and subsequent Acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are on said roll and thereon; and all persons who have been enrolled



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by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities, and who were married when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to citizenship under Cherokee laws.

§ 386. **Roll of Cherokee Freedmen.**—It shall make a roll of Cherokee freedmen in strict compliance with the decision of the Court of Claims rendered the third day of February, eighteen hundred and ninety-six.

§ 387. **Rolls of Other Tribes.**—Said commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons who may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

§ 388. **Identity of Mississippi Choctaws.**—Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seven, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

§ 389. **Roll of Creek Freedmen.**—The roll of Creek freedmen made by J. W. Dunn, under authority of the United States, prior to March fourteenth, eighteen hundred and eighty-seven, is hereby confirmed, and said commission is directed to enroll all persons now living whose names are found on said rolls, and all descendants born since the date of said roll to persons whose names are found thereon, with such other persons of African descent as may have been lawfully admitted by the lawful authorities of the Creek Nation.

§ 390. **Roll of Choctaw Freedmen.**—It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty.

§ 391. **Roll of Chickasaw Freedmen.**—It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and thirty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty and forty acres of land, including their present residences and improvements, shall be allotted each, to be selected, held, and used by them until their rights under said treaty shall be determined in such manner as shall be hereafter provided by Congress.

§ 392. **Citizenship in More Than One Tribe.**—The several tribes may, by agreement, determine the right of persons who for any reason may claim citizenship in two or more tribes, and to allotment of lands and distribution of moneys belonging to each tribe; but if no such agreement be made, then such claimant shall be entitled to such rights in one tribe only, and may elect in which tribe he will take such right; but if he fail or refuse to make such selection in due time, he shall be enrolled in the tribe with whom he has resided, and there be given such allotment and distributions, and not elsewhere.

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No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship:

§ 393. **Mississippi Choctaws Excepted.**—**Provided, however,** That nothing contained in this Act shall be so construed as to militate against any rights or privileges which the Mississippi Choctaws may have under the laws of or the treaties with the United States.

§ 394. **Rolls to Be Made Descriptive of the Persons.**—Said commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said commission, and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be so enrolled, to appear before said commission for enrollment, at such times and places as may be fixed by said commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct said work.

§ 395. **Rolls to Be Final.**—The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

396. Commission to Have Inquisitorial Power.—The members of said commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense.

397. Settlement Upon Lands of Other Tribes.—(Sec. 22.) That where members of one tribe, under intercourse laws, treaties, or customs, have made homes within the limits and on the lands of another tribe they may retain and take allotment of the same embracing same under such agreement as may be made between such tribes respecting such settlers; but if no such agreement be made the improvements so made shall be appraised, and the value thereof, including all damages incurred by such settler incident to enforced removal, shall be paid to him immediately upon removal, out of any funds belonging to the tribe, or such settler, if he so desire, may make private sale of his improvements to any citizen of the tribe owning the lands:

Provided, That he shall not be paid for improvements made on lands in excess of that to which he, his wife, and his children are entitled to under this Act.

§ 398. Agricultural Leases.—(Sec. 23.) That all leases of agricultural or grazing land belonging to any tribe made after the first day of January, eighteen hundred and ninety-eight, by the tribe or any member thereof, shall be absolutely void, and all such grazing leases made prior to said date shall terminate on the first day of April, eighteen hundred and ninety-nine, and all such agricultural leases shall terminate on *January first, nineteen hundred*; but this shall



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not prevent individuals from leasing their allotments when made to them as provided in this Act, nor from occupying or renting their proportionate shares of the tribal lands until the allotments herein provided for are made.

§ 399. **Tribal Moneys.**—(Sec. 24.) That all moneys paid into the United States Treasury at Saint Louis, Missouri, under provisions of this Act shall be placed to the credit of the tribe to which they belong; and the assistant United States treasurer shall give triplicate receipts therefor to the depositor.

§ 400. **Segregation of Land for Registered Delaware.**—(Sec. 25.) That before any allotment shall be made of land in the Cherokee Nation, there shall be segregated therefrom by the commission heretofore mentioned, in separate allotments or otherwise, the one hundred and fifty-seven thousand six hundred acres purchased by the Delaware tribe of Indians from the Cherokee Nation under agreement of April eighth, eighteen hundred and sixty-seven, subject to the judicial determination of the rights of said descendants and the Cherokee Nation under said agreement.

§ 401. **Delaware Indians Empowered to Bring Suit.**—That the Delaware Indians residing in the Cherokee Nation are hereby authorized and empowered to bring suit in the Court of Claims of the United States, within sixty days after the passage of this Act, against the Cherokee Nation for the purpose of determining the rights of said Delaware Indians in and to the lands and funds of said nation under their contract and agreement with the Cherokee Nation dated April eighth, eighteen hundred and sixty-seven; the Cherokee Nation may bring a like suit against the Delaware Indians; and jurisdiction is conferred on a court to adjudicate and fully determine the same, with right of appeal to either party to the Supreme Court of the United States.

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Laws of Various Tribes Not Enforceable.—(Sec. 26.) That on and after the passage of this Act the laws of various tribes or nations of Indians shall not be enforced in law or in equity by the courts of the United States in Indian Territory.

Indian Inspector. (Sec. 27.) That the Secretary of the Interior is authorized to locate one Indian inspector in each Indian Territory, who may, under his authority and direction, perform any duties required of the Secretary of the Interior by law, relating to affairs therein.

Tribal Courts Abolished.—(Sec. 28.) That on the first day of July, eighteen hundred and ninety-eight, all courts in Indian Territory shall be abolished, and no judge or clerk of said courts shall thereafter have any authority or power to do or perform any act theretofore authorized by law in connection with said courts, or to receive any salary for same; and all civil and criminal causes then pending in any such court shall be transferred to the United States court in said Territory by filing with the clerk of said court the original papers in the suit:

Provided, That this section shall not be in force as to the Choctaw, Chickasaw, and Creek tribes or nations until the first day of October, eighteen hundred and ninety-eight.

Atoka Agreement.—(Sec. 29.) That the agreement made by the Commission to the Five Civilized Tribes representing the Choctaw and Chickasaw Indians on the twenty-third day of April, eighteen hundred and ninety-seven, as herein amended, is hereby approved and confirmed, and the same shall be of full force and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the number of votes cast by the members of said tribes in a convention held for that purpose; and the executives of said tribes are hereby authorized and directed to make pub-



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lie proclamation that said agreement shall be voted at the next general election, or at any special election called by such executives for the purpose of voting on agreement; and at the election held for such purpose male members of each of said tribes qualified to vote under his tribal laws shall have the right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not: **Provided, That** a person whose right to citizenship in either of said tribes or nations is now contested in original or appellate proceedings before any United States court shall be permitted to vote at said election: **Provided further, That** the votes cast in both said tribes or nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes or nations, and shall be presented to said national secretaries to a board of commissioners consisting of the principal chief and national secretary of Choctaw Nation, the governor and national secretary of Chickasaw Nation, and a member of the Commission to the Five Civilized Tribes, to be designated by the chairman of said commission; and said board shall meet without delay at Atoka, in the Indian Territory, and canvass and count said votes and make proclamation of the result; and if said agreement as amended be so ratified, the provisions of this Act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in any manner affect the provisions of section fourteen of this Act, which said amendment and agreement is as follows:

§ 405a. **Pertaining to Creek Agreement.**—(Sec. 30.) That the agreement made by the Commission to the Five Civilized Tribes with the commission representing the Muscogee (or Creek) tribe of Indians on the twenty-seventh day of September, eighteen hundred and ninety-seven, as hereinafter amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the

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ay of December, eighteen hundred and ninety-eight, by majority of the votes cast by the members of said tribe t an election to be held for that purpose; and the executive of said tribe is authorized and directed to make public roclamation that said agreement shall be voted on at the next general election, to be called by such executive for he purpose of voting on said agreement; and if said agreement as amended be so ratified, the provisions of this act hall then only apply to said tribes where the same do not onflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in anyanner affect the provisions of section fourteen of this Act, hich said amended agreement is as follows: (Here follows Creek agreement which was not ratified and did not come effective.)



CHAPTER XLII.

CHEROKEE ALLOTMENT AGREEMENT.

Chap. 1375.—An Act to provide for the allotment of lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes. (Approved July 1, 1902; Ratified August 7, 1902.) (32 Stat. 716.)

- § 406. Definition of "Nation," "Tribe."**
- 407. Definition of "Principal Chief," "Chief Executive."**
- 408. "Dawes Commission," "Commission."**
- 409. Definition of "minor."**
- 410. Definition of "Allotable Land."**
- 411. Definition of "Select."**
- 412. Definition of "Member," "Members," "Citizen," "Citizens."**
- 413. Masculine Includes Feminine.**
- 414. Appraisement of Land.**
- 415. Appraisement by Commission.**
- 416. Allotment Equal to 110 Acres.**
- 417. 10 Acres Smallest Legal Subdivision.**
- 418. Homestead—Restrictions.**
- 419. Lands Inalienable for Five Years.**
- 420. Surplus Alienable in Five Years.**
- 421. Selection by Commission.**
- 422. Smallest Legal Subdivision.**
- 423. Unlawful to Enclose More Than 110 Acres.**
- 424. Penalty.**
- 425. Death Prior to Selection.**
- 426. Allotment Certificate Conclusive.**
- 427. Jurisdiction of Commission Over Allotment Exclusive of State Courts.**
- 428. Delawares.**
- 429. Reservation from Allotment.**
- 430. Roll as of Sept. 1, 1902.**
- 431. Enrollment.**
- 432. Rolls Made in Compliance With Curtis Act, etc.**
- 433. No Enrolled Member of Other Tribe Entitled.**
- 434. Approval of rolls by Secretary of Interior.**
- 435. Enrollment of Children Born Subsequent to Sept. 1, 1902.**

436. Only Enrolled Members to Participate.
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464. Acceptance of Patents for Minors, Etc.
465. Patents to be Recorded.
466. Expiration of Tribal Government.
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469. Payment of Funds of Tribe.
470. Payment of Tribal Indebtedness.
471. Demands Against the United States Referred to Court of Claims.
472. No contest After Nine Months.
473. Selection for Minors.
474. Buildings of Nation.
475. Agricultural Leases.
476. No provision of Curtis Act Inconsistent Shall Apply.
477. Effective Upon Ratification.
478. Election.

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§ 406. **Definition of "Nation"—"Tribe."**—(Sec. 1.) The words "nation" and "tribe" shall each be held to refer to the Cherokee Nation or tribe of Indians in the Territory.

§ 407. **Definition of "Principal Chief"—"Chief Executive."**—(Sec. 2.) The words "principal chief" or "executive" shall be held to mean the principal chief of the tribe.

§ 408. **"Dawes Commission"—"Commission."**—(Sec. 3.) The words "Dawes Commission" or "Commission" shall be held to mean the United States Commission to the Five Civilized Tribes.

§ 409. **Definition of Minor.**—(Sec. 4.) The word "minor" shall be held to mean males under the age of twenty years and females under the age of eighteen years.

§ 410. **Definition of "Allottable Land."**—(Sec. 5.) The terms "allottable lands" or "lands allottable" shall be held to mean all the lands of the Cherokee tribe not reserved from allotment.

§ 411. **Definition of "Select."**—(Sec. 6.) The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office to be established by the Dawes Commission for the Cherokee Nation, for particular tract of land.

§ 412. **Definition of "Member," "Members," "Citizen" or "Citizens."**—(Sec. 7.) The words "member" or "members" or "citizen" or "citizens" shall be held to mean members or citizens of the Cherokee Nation, in the Indian Territory.

. **Masculine Includes Feminine.**—(Sec. 8.) Every word in this Act importing the masculine gender may extend and be applied to females as well as males, and the plural may include also the singular, and vice versa.

. **Appraisement of Land.**—(Sec. 9.) The lands belonging to the Cherokee tribe of Indians in Indian Territory except such as are herein reserved from allotment, shall be appraised at their true value: **Provided**, That in the determination of the value of such land, consideration shall not be given to the location thereof, to any timber thereon, or to any mineral deposits contained therein, and the appraisement shall be made without reference to improvements which may be located thereon.

. **Appraisement by Commission.**—(Sec. 10.) The appraisement, as herein provided, shall be made by the Commission to the Five Civilized Tribes, under the direction of the Secretary of the Interior.

. **Allotment Equal to One Hundred and Ten Acres.**—(Sec. 11.) There shall be allotted by the Commission to the Five Civilized Tribes and to each citizen of the Cherokee Nation as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, a tract of land equal in value to one hundred and ten acres of the allottable lands of the Cherokee Nation, to conform to the survey as may be to the areas and boundaries established by the Government survey, which land may be selected by the allottee so as to include his improvements.

. **Ten Acres Smallest Legal Subdivision.**—(Sec. 12.) For the purpose of making allotments and designating homesteads hereunder, the forty-acre, or quarter of a section, subdivision established by the Government shall not be dealt with as if further subdivided into four



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squal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a section.

§ 418. Homestead—Restrictions.—(Sec. 13.) Each member of said tribe shall, at the time of the selection allotment, designate as a homestead out of said alloted land equal in value to forty acres of the average alloted lands of the Cherokee Nation, as nearly as may be, shall be inalienable during the lifetime of the allottee exceeding twenty-one years from the date of the certificate of allotment. Separate certificate shall issue for said homestead. During the time said homestead is held by the allottee the same shall be nontaxable and shall not be subject for any debt contracted by the owner thereof while so held by him.

§ 419. Lands Inalienable for Five Years.—(Sec. 14.) Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to satisfy any debt or obligation, or be alienated by the allottee or his heirs, before the expiration of five years from the date of the ratification of this Act.

§ 420. Surplus Alienable in Five Years.—(Sec. 15.) Lands allotted to the members of said tribe, except land as is set aside to each for a homestead as herein provided, shall be alienable in five years after issuance of certificate.

§ 421. Selection By Commission.—(Sec. 16.) If for any reason an allotment should not be selected or a homestead designated by or on behalf of any member of the tribe, it shall be the duty of said Commission to make said selection and designation.

§ 422. Smallest Legal Subdivision.—(Sec. 17.) In making of allotments and in the designation of home

members of said tribe, said Commission shall not be required to divide lands into tracts of less than the smallest subdivision provided for in section twelve hereof.

423. Unlawful to Inclose More Than 110 Acres.—(Sec. 18.) It shall be unlawful after ninety days after the ratification of this Act by the Cherokees for any member of the Cherokee tribe to inclose or hold possession of, in any manner, by himself or through another, directly or indirectly, lands in value than that of one hundred and ten acres of average allotable lands of the Cherokee Nation, either for himself or for his wife, or for each of his minor children, if members of said tribe; and any member of said tribe found in such possession of lands, or having the same in any manner inclosed, after the expiration of ninety days after the date of the ratification of this Act shall be deemed guilty of a misdemeanor.

424. Penalty.—(Sec. 19.) Any person convicted of violating any of the provisions of section eighteen of this Act shall be punished by a fine of not less than one hundred dollars, shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of said fine and costs), and shall forfeit possession of any property in question, and each day during which such offense is committed or continues to exist shall be deemed a separate offense. The United States district attorney for the northern district is required to see that the provisions of said section eighteen are strictly enforced, and he shall immediately, after the expiration of ninety days after the ratification of this Act, proceed to assess all persons of such excessive holdings of lands and to prosecute them for so unlawfully holding the same. The Commission to the Five Civilized Tribes shall have authority to make investigations of all violations of section eighteen and make report thereon to the United States district attorney.

§ 425. **Death Prior to Selection.**—(Sec. 20.) If a son whose name appears upon the roll prepared as provided shall have died subsequent to the first September, nineteen hundred and two, and before his allotment, the lands to which such person have been entitled if living shall be allotted in his and shall, with his proportionate share of other tribal property, descend to his heirs according to the laws of inheritance and distribution as provided in chapter forty-nine of the Revised Statutes of Arkansas: **Provided** that the allotment thus to be made shall be selected by the appointed administrator or executor. If, however, such administrator or executor be not duly and expeditiously appointed, or fails to act promptly when appointed, or for any other cause such selection be not so made within a reasonable and proper time, the Dawes Commissioner shall designate the lands thus to be allotted.

§ 426. **Allotment Certificate Conclusive.**—(Sec. 21.) Allotment certificates issued by the Dawes Commissioner shall be conclusive evidence of the right of an allottee to the tract of land described therein, and the United States Indian agent for the Union Agency shall, under the direction of the Secretary of the Interior, upon the application of the allottee, place him in possession of his allotment, and remove therefrom all persons objectionable to him, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court.

§ 427. **Jurisdiction of Commission Over Allotment Conclusive.**—(Sec. 22.) Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes under the direction of the Secretary of the Interior, to terminate all matters relative to the appraisement and allotment of lands.

§ 428. **Delawares.**—(Sec. 23.) All Delaware Indians who are members of the Cherokee Nation shall take

share in the funds of the tribe, as their rights may be determined by the judgment of the Court of Claims, or by the Supreme Court if appealed, in the suit instituted thereby by the Delawares against the Cherokee Nation, and now pending; but if said suit be not determined before said Commission is ready to begin the allotment of lands of the tribe as herein provided, the Commission shall cause to be segregated one hundred and fifty-seven thousand six hundred acres of land, including lands which have been selected and occupied by Delawares in conformity to the provisions of their agreement with the Cherokees dated April eighth, eighteen hundred and sixty-seven, such lands so to remain, subject to disposition according to such judgment as may be rendered in said cause; and said Commission shall thereupon proceed to the allotment of the remaining lands of the tribe as aforesaid. Said Commission shall, when final judgment is rendered, allot lands to such Delawares in conformity to the terms of the judgment and their individual rights thereunder. Nothing in this Act shall in any manner impair the rights of either party to said contract as the same may be finally determined by the court, or shall interfere with the holdings of the Delawares under their contract with the Cherokees of April eighth, eighteen hundred and sixty-seven, until their rights under said contract are determined by the courts in their suit now pending against the Cherokees, and said suits shall be advanced on the docket of said courts and determined at the earliest time practicable.

429. Reservation From Allotment.—(Sec. 24.) The following lands shall be reserved from the allotment of lands herein provided for:

) All lands set apart for town sites by the provisions of the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), the provisions of the Act of Congress

of May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), and by the provisions of this Act.

(b) All lands to which, upon the date of the ratification of this Act, any railroad company may, under any treaty or Act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses only, connected with the maintenance and operation of the railroad.

(c) All lands selected for town cemeteries not to exceed twenty acres each.

(d) One acre of land for each Cherokee schoolhouse not included in town sites or herein otherwise provided for.

(e) Four acres for Willie Halsell College at Vinita.

(f) Four acres for Baptist Mission school at Tahlequah.

(g) Four acres for Presbyterian school at Tahlequah.

(h) Four acres for Park Hill Mission school south of Tahlequah.

(i) Four acres for Elm Springs Mission school at Barren Fork.

(j) Four acres for Dwight Mission school at Sallisaw.

(k) Four acres for Skiatook Mission near Skiatook.

(l) Four acres for Lutheran Mission school on Illinois River north of Tahlequah.

(m) Sufficient ground for burial purposes where neighborhood cemeteries are now located, not to exceed three acres each.

(n) One acre for each church house outside of towns.

(o) The square now occupied by the capitol building at Tahlequah.

p) The grounds now occupied by the national jail at Tahlequah.

q) The grounds now occupied by the Cherokee Advocate printing office at Tahlequah.

r) Forty acres for the Cherokee Male Seminary near Tahlequah.

s) Forty acres for the Cherokee Female Seminary at Tahlequah.

t) One hundred and twenty acres for the Cherokee Orphan Asylum on Grand River.

u) Forty acres for colored high school in Tahlequah district.

v) Forty acres for the Cherokee Insane Asylum.

w) Four acres for the school for blind, deaf and dumb children near Fort Gibson.

The acre so reserved for any church or schoolhouse in any quarter section of land shall be located where practicable in a corner of such quarter section adjacent to the section lines thereof.

Provided, That the Methodist Episcopal Church South, within twelve months after the ratification of this agreement, pay ten dollars per acre for the one hundred and sixty acres of land adjacent to the town of Vinita, and heretofore apart by act of the Cherokee national council for the use of said church for missionary and educational purposes, and now occupied by Willie Halsell College (formerly Coway College), and shall thereupon receive title therefor; but if said church fail so to do it may continue to occupy said one hundred and sixty acres of land as long as it is needed for the purposes aforesaid.

And any other school or college in the Cherokee Nation which claims to be entitled under the law to a greater num-

ber of acres than is set apart for said school or college by section twenty-four of this Act may have the number of acres to which it is entitled by law. The trustees of such school or college shall, within sixty days after the ratification of this Act, make application to the Secretary of the Interior for the number of acres to which such school or college claims to be entitled, and if the Secretary of the Interior shall find that such school or college is, under the laws and treaties of the Cherokee Nation in force prior to the ratification of this Act, entitled to a greater number of acres of land than is provided for in this Act, he shall so determine and his decision shall be final. The amount so found by the Secretary of the Interior shall be set apart for the use of such college or school as long as the same may be used for missionary and educational purposes: **Provided**, That the trustees of such school or college shall pay ten dollars per acre for the number of acres so found by the Secretary of the Interior and which have been heretofore set apart by act of the Cherokee national council for use of such school or college for missionary or educational purposes, and upon the payment of such sum within sixty days after the decision of the Secretary of the Interior said college or school may receive a title to such land.

§ 430. **Roll As of September 1st, 1902.**—(Sec. 25.) The roll of citizens of the Cherokee Nation shall be made as of September first, nineteen hundred and two, and the names of all persons then living and entitled to enrollment on that date shall be placed on said roll by the Commission to the Five Civilized Tribes.

§ 431. **Enrollment.**—(Sec. 26.) The names of all persons living on the first day of September, nineteen hundred and two, entitled to be enrolled as provided in section twenty-five hereof, shall be placed upon the roll made by the Commission, and no child born thereafter to a citizen, and no white person who has intermarried with a Cherokee

zen since the sixteenth day of December, eighteen hundred and ninety-five, shall be entitled to enrollment or to participate in the distribution of the tribal property of the Cherokee Nation.

§ 432. **Rolls Made in Compliance With Curtis Act, Etc.** (Sec. 27.) Such rolls shall in all other respects be made in strict compliance with the provisions of section twenty-eight of the Act of Congress approved June twenty-eight, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), and the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one).

§ 433. **No Enrolled Member of Other Tribe Entitled:—**(Sec. 28.) No person whose name appears upon the roll made by the Dawes Commission as a citizen or freedman of any other tribe shall be enrolled as a citizen of the Cherokee Nation.

§ 434. **Approval of Rolls By Secretary of Interior.—**(Sec. 29.) For the purpose of expediting the enrollment of the Cherokee citizens and the allotment of lands as here provided, the said Commission shall, from time to time, and as soon as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final roll of citizens of the Cherokee tribe, upon which allotment of land and distribution of other tribal property shall be made. When there shall have been submitted to and approved by the Secretary of the Interior lists enclosing the names of all those lawfully entitled to enrollment, the roll shall be deemed complete. The roll so prepared shall be made in quadruplicate, one to be deposited with the Secretary of the Interior, one with the Commis-

sioner of Indian Affairs, one with the principal chief of Cherokee Nation, and one to remain with the Commission to the Five Civilized Tribes.

§ 435. **Enrollment of Children Born Subsequent to September 1st, 1902.**—(Sec. 30.) During the months of September and October, in the year nineteen hundred and two, the Commission to the Five Civilized Tribes may receive applications for enrollment of such infant children as may have been born to recognized and enrolled citizens of the Cherokee Nation on or before the first day of September, nineteen hundred and two, but the application of no person whomsoever for enrollment shall be received after the thirty-first day of October, nineteen hundred and two.

§ 436. **Only Enrolled Members to Participate.**—(Sec. 31.) No person whose name does not appear upon the roll prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Cherokee tribe, and those whose names appear thereon shall participate in the manner set forth in the Act: **Provided,** That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person, whose name is on said roll and who died prior to the first day of September, nineteen hundred and two. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before said date, and any person or persons who may conceal the death of any one on said roll as aforesaid for the purpose of profiting by said concealment, and who shall knowingly receive any portion of any land or other tribal property or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less

not more than one year nor more than five years, and in addition to a forfeiture to the Cherokee Nation of the lands, or tribal property and proceeds so obtained.

437. Cherokee Schools.—(Sec. 32.) The Cherokee school fund shall be used, under the direction of the Secretary of the Interior, for the education of children of Cherokee citizens, and the Cherokee schools shall be conducted under rules prescribed by him according to Cherokee laws, subject to such modifications as he may deem necessary to make the schools most effective and to produce the best possible results; said schools to be under the supervision of a supervisor appointed by the Secretary and a school board elected by the national council.

438. Teachers.—(Sec. 33.) All teachers shall be examined by said supervisor, and said school board and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed; but where all qualifications are equal, preference shall be given to citizens of the Cherokee Nation in their employment.

439. Money for Schools—How Appropriated.—(Sec. 34.) All moneys for carrying on the schools shall be appropriated by the Cherokee national council, not to exceed the amount of the Cherokee school fund; but if the council should refuse to make the necessary appropriations, the Secretary of the Interior may direct the use of a sufficient amount of the school fund to pay all necessary expenses for the efficient conduct of the schools, strict account thereof to be rendered to him and the principal chief.

(Sec. 35.) All accounts for expenditures in carrying on the schools shall be examined and approved by said supervisor, and also by the general superintendent of Indian schools in the Indian Territory, before payment thereof is made.

(Sec. 36.) The interest arising from the Cherokee orphan fund shall be used, under the direction of the Secretary of the Interior, for maintaining the Cherokee Orphan Asylum for the benefit of the Cherokee orphan children.

§ 440. **Roads.**—(Sec. 37.) Public highways or roads two rods in width, being one rod on each side of the section line, may be established along all section lines without any compensation being paid therefor, and all allottees, purchasers, and others shall take the title to such lands subject to this provision; and public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues and to be paid by the Cherokee Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid for in the same manner.

§ 441. **Townsites—Acreage.**—(Sec. 38.) The lands which may hereafter be set aside and reserved for town sites upon the recommendation of the Dawes Commission under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and forty acres for each town site.

§ 442. **Improvements on Lot.**—(Sec. 39.) Whenever any tract of land shall be set aside by the Secretary of the Interior for town-site purposes, as provided in said Act of May thirty-first, nineteen hundred, or by the terms of this

Act, which is occupied at the time of such segregation by any member of the Cherokee Nation, such occupant shall be allowed to purchase any lot upon which he then has improvements other than fences, tillage, and temporary improvements, in accordance with the provisions of the Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), or, if he so elects, the lot will be sold under rules and regulations to be prescribed by the Secretary of the Interior, and he shall be fully compensated for his improvements thereon out of the funds of the tribe arising from the sale of the town sites, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe, and one by the occupant of the land, said board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriations for surveying, laying out, platting, and selling town sites.

§ 443. **Platting, Appraisal and Disposal.**—(Sec. 40.) All town sites which may hereafter be set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), with the additional acreage added thereto, as well as all town sites set aside under the provisions of this Act having a population of less than two hundred, shall be surveyed, laid out, platted, appraised, and disposed of in like manner, and with like preference rights accorded to owners of improvements as other town sites in the Cherokee Nation are surveyed, laid out, platted, appraised, and disposed of under the Act of Congress of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), as modified or supplemented by the Act of May thirty-first, nineteen hundred: **Provided,**

That as to the town sites set aside as aforesaid the owner of the improvements shall be required to pay the full appraised value of the lot instead of the percentage named in said Act of June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five).

§ 444. **Improvements—Purchase at One-fourth Value.**—(Sec. 41.) Any person being in possession or having the right to the possession of any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and owning improvements thereon, other than temporary buildings, fencing, or tillage, shall have the right to purchase the same at one-fourth of the appraised value thereof.

§ 445. **No Improvements.**—(Sec. 42.) Any person being in possession of, or having the right to the possession of, any town lot or lots, as surveyed and platted under the direction of the Secretary of the Interior, in accordance with the Act of Congress, approved May thirty-first, nineteen hundred (Thirty-first Statutes, page two hundred and twenty-one), the occupancy of which lot or lots was originally acquired under any town-site act of the Cherokee Nation, and not having any improvements thereon, shall have the right to purchase the same at one-half of the appraised value thereof.

§ 446. **Possession With Improvements.**—(Sec. 43.) Any citizen in rightful possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase

me by paying one-half the appraised value thereof: **Provided**, That any other person in undisputed possession of any town lot having improvements thereon other than temporary buildings, fencing, and tillage, the occupancy of which has not been acquired under tribal laws, shall have the right to purchase such lot by paying the appraised value thereof.

§ 447. Possession Without Improvements.—(Sec. 44.) Town lots not having thereon improvements other than temporary buildings, fences, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after appraisement, under the direction of the Secretary of the Interior, after due advertisement, at public auction, to the highest bidder, not less than their appraised value.

§ 448. Purchase Price—How Paid.—(Sec. 45.) When the appraisement of any town lot is made and approved, the town-site commission shall notify the claimant thereof of the amount of appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money he shall pay in three equal annual installments without interest; but if the claimant of any such lot fail to purchase same or make the first and second payments aforesaid or make any other payment within the time specified, the lot and improvements shall be sold at public auction to the highest bidder, under the direction of the Secretary of the Interior, at a price not less than its appraised value.

449. Sale At Public Auction.—(Sec. 46.) When any approved lot shall be sold at public auction because of the failure of the person owning improvements thereon to purchase same within the time allowed in said Act of Congress

approved June twenty-eighth, eighteen hundred and ninety-eight (Thirtieth Statutes, page four hundred and ninety-five), said improvements shall be appraised by a committee, one member of which shall be selected by the owner of the improvements and one member by the purchaser of said lot; and in case the said committee is not able to agree upon the value of said improvements, the committee may select a third member, and in that event the determination of the majority of the committee shall control. Said committee of appraisement shall be paid such compensation for their services by the two parties in interest, share and share alike, as may be agreed upon, and the amount of said appraisement shall be paid by the purchaser of the lot to the owner of the improvements in cash within thirty days after the decision of the committee of appraisement.

§ 450. **Terms of Sale.**—(Sec. 47.) The purchaser of any unimproved town lot sold at public auction shall pay twenty-five per centum of the purchase money at the time of the sale, and within four months thereafter he shall pay twenty-five per centum additional, and the remainder of the purchase money he shall pay in two equal annual installments without interest.

§ 451. **Towns of Less Than 200 People.**—(Sec. 48.) Such towns in the Cherokee Nation as may have a population of less than two hundred people not otherwise provided for, and which, in the judgment of the Secretary of the Interior, should be set aside as town sites, shall have their limits defined as soon as practicable after the approval of this Act in the same manner as provided for other town sites.

§ 452. **Cemeteries.**—(Sec. 49.) The town authorities of any town site in said Cherokee Nation may select and locate, subject to the approval of the Secretary of the Interior, a cemetery within suitable distance from said town

ace such number of acres as may be deemed necessary for such purpose. The town-site commission shall appraise the same at its true value, and the town may purchase the same within one year from the approval of the commission by paying the appraised value. If any citizen have improvements thereon, said improvements shall be appraised by said town-site commission and paid for by the citizen. **Provided,** That lands already laid out by tribal authorities for cemeteries shall be included in the town-site provided for without cost to the towns, and the value of the burial lots therein now occupied for such purposes shall in no wise be disturbed: **And provided further,** That any park laid out and surveyed in any town shall be duly appraised at a fair valuation, and the interests of said town shall, within one year after the completion of the survey and the appraisalment of said park, be paid by the Secretary of the Interior, pay the appraised value to the proper officer for the benefit of the tribe.

United States to Pay Expense of Platting, Etc.—

(.) The United States shall pay all expenses incident to the platting, platting, and disposition of town lots, and all interests of lands made under the provisions of this plan and agreement, except where the town authorities may have determined that they may be duly authorized to survey and plat their town lots at the expense of such towns.

Unsold Lots Not Taxable.—(Sec. 51.) No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein provided.

Past Due Payments to Bear Interest.—(Sec. 52.) If the purchaser of any town lot fail to make payment of the same when due, the same shall thereafter bear six per cent interest per annum until paid.

§ 456. **Church and Parsonage Lots.**—(Sec. 53.) All or parts of lots, not exceeding fifty by one hundred fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at time of appraisement, shall be conveyed gratuitously to churches to which such improvements belong, and if churches have inclosed other adjoining lots actually necessary for their use, they may purchase the same by paying the appraised value thereof.

§ 457. **Vacancy in Commission.**—(Sec. 54.) When the chief executive of the Cherokee Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioners appointed by the chief executive to certify or act, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy thus created.

§ 458. **Payment of Purchase Price.**—(Sec. 55.) The purchaser of any town lot may at any time pay the full amount of the purchase money, and he shall thereupon receive a deed therefor.

§ 459. **Purchaser at Public Auction.**—(Sec. 56.) Any person may bid for and purchase any lot sold at public auction as herein provided.

§ 460. **Lots for Court-Houses, etc.**—(Sec. 57.) The United States may purchase in any town in the Cherokee Nation suitable lands for court-houses, jails, or other necessary public purposes for its use by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such lands are needed, and if any person have improvements thereon the same shall be appraised in like manner as other town property, and shall be paid for by the United States.

ents.—(Sec. 58.) The Secretary of the Interior shall furnish the principal chief with blank patents and conveyances herein provided for, and when he receives his allotment of land, or when any alien has been so ascertained and fixed that title should be conveyed, the principal chief shall thereupon proceed to execute and deliver to him a patent conveying all the right, title, and interest of the allottee, and of all other citizens, in and to the land shown in his allotment certificate.

Conveyances to Be Approved.—(Sec. 59.) All patents and conveyances shall be approved by the Secretary of the Interior, and shall serve as a relinquishment to the grantee of all right, title, and interest of the United States in the lands embraced in his patent.

Acceptance of Patent, Waiver.—(Sec. 60.) Any person accepting such patent shall be deemed to assent to the patent and conveyance of all the lands of the tribe shown on this Act, and to relinquish all his right, title, and interest in the same, except in the proceeds of lands sold on his allotment.

Acceptance of Patents for Minors, etc.—(Sec. 61.) The power of patents for minors and incompetents by the allottee to select their allotments for them shall not be sufficient to bind such minors and incompetents to the conveyance of all other lands of the tribe.

Patents to Be Recorded.—(Sec. 62.) All patents, when granted and approved, shall be filed in the office of the General Land Commission, and recorded in a book provided for that purpose, until such time as Congress shall make provision for record of land titles, without delay to the grantee, and such records shall have like force and effect as public records.



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§ 466. **Expiration of Tribal Government.**—(Sec. 63.) The tribal government of the Cherokee Nation shall not longer than March fourth, nineteen hundred and

§ 467. **Collection of Revenues.**—(Sec. 64.) The collection of all revenues of whatsoever character belonging to the tribe shall be made by an officer appointed by the Secretary of the Interior, under rules and regulations prescribed by the said Secretary.

§ 468. **All Necessary Powers.**—(Sec. 65.) All things necessary to carry into effect the provisions of this Act, otherwise herein specifically provided for, shall be done under the authority and direction of the Secretary of the Interior.

§ 469. **Payment of Funds of Tribe.**—(Sec. 66.) All moneys of the tribe, and all moneys accruing under the provisions of this Act, shall be paid out under the direction of the Secretary of the Interior, and when required for the payment of claims shall be paid directly to each individual claimant or appointed officer of the United States, under the direction of the Secretary of the Interior.

§ 470. **Payment of Tribal Indebtedness.**—(Sec. 67.) The Secretary of the Interior shall cause to be paid a discharge of the indebtedness of said tribe existing at the date of the passage of this act which may have lawfully been contracted, and warrants therefor regularly issued upon the funds of the tribe, as also warrants drawn by authority of law hereafter and prior to the dissolution of the tribal government, such payments to be made from any funds of the United States Treasury belonging to said tribe, and the indebtedness of the tribe shall be paid in full by the pro rata distribution of the funds of the tribe shall be made. The Secretary of the Interior shall make such pay

at the earliest time practicable and he shall make all needed rules and regulations to carry this provision into effect.

§ 471. **Demands Against United States Referred to Court of Claims.**—(Sec. 68.) Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

§ 472. **No Contest After Nine Months.**—(Sec. 69.) After the expiration of nine months after the date of the original selection of an allotment by or for any citizen of the Cherokee tribe as provided in this Act, no contest shall be instituted against such selection, and as early thereafter as practicable patent shall issue therefor.

§ 473. **Selections for Minors.**—(Sec. 70.) Allotments be selected and homesteads designated for minors by father or mother, if citizens, or by a guardian, or by the administrator having charge of their estate, in order named; and for prisoners, convicts, aged and infirm persons, and soldiers and sailors of the United States or outside of the Indian Territory, by duly appointed agents under power of attorney; and for incompetents by guardians, curators, or other suitable persons akin to them it shall be the duty of said Commission to see that such selections are made for the best interests of such parties.

§ 474. **Buildings of Nation.**—(Sec. 71.) Any person taking as his allotment lands located around the Cherokee National Male Seminary, the Cherokee National Female Seminary, or Cherokee Orphan Asylum which have not been reserved from allotment as herein provided, and upon such buildings, fences, or other property of the Cherokee Nation are located, such buildings, fences, or other property shall be appraised at the true value thereof and be paid for by the allottee taking such lands as his allotment, and the money to be paid into the treasury of the United States to the credit of the Cherokee Nation.

§ 475. **Agricultural Leases.**—(Sec. 72.) Cherokee citizens may rent their allotments when selected for a period not to exceed one year for grazing purposes only, and for a period not to exceed five years for agricultural purposes but without any stipulation or obligation to renew the lease, but leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes and for mineral purposes may be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and the doctrine of estoppel shall ever prevent the assertion of its inv

grazed upon leased allotments shall not be liable to bal' tax, but when cattle are introduced into the Nation and grazed on lands not selected as allot- y citizens the Secretary of the Interior shall collect e owners thereof a reasonable grazing tax for the of the tribe, and section twenty-one hundred and en of the Revised Statutes of the United States shall aafter apply to Cherokee lands.

No Provision of Curtis Act Inconsistent Shall—(Sec. 73.) The provisions of section thirteen of of Congress approved June twenty-eighth, eighteen l and ninety-eight, entitled "An Act for the protec- the people of the Indian Territory, and for other s," shall not apply to or in any manner affect the r other property of said tribe, and no Act of Con- : treaty provision inconsistent with this agreement : in force in said Nation except sections fourteen enty-seven of said last-mentioned Act, which shall e in force as if this agreement had not been made.

Effective Upon Ratification.—(Sec. 74.) This Act t take effect or be of any validity until ratified by ity of the whole number of votes cast by the legal of the Cherokee Nation in the manner following:

Election.—(Sec. 75.) The principal chief shall, en days after the passage of this Act by Congress, ublic proclamation that the same shall be voted upon ial election to be held for that purpose within thirty ereafter, on a certain date therein named, and he point such officers and make such other provisions be necessary for holding such election. The votes uch election shall be forthwith duly certified as re- y Cherokee law, and the votes shall be counted by okee national council, if then in session, and if not a the principal chief shall convene an extraordinary

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session for the purpose, in the presence of a member of the Commission to the Five Civilized Tribes, and said member and the principal chief shall jointly make certificate thereof and proclamation of the result, and transmit the same to the President of the United States.

Approved, July 1, 1902.

CHAPTER XLIII.

CHOCTAW-CHICKASAW ORIGINAL AGREEMENT.

Chap. 517. Adopted June 28, 1898; Ratified August 24, 1898.
(30 Stat. 495.)

- 479.** Parties to Agreement.
- 480.** Allotments Equal in Value.
- 481.** Coal and Asphalt Reserved.
- 482.** Allotments of Freedmen Deducted.
- 483.** Freedmen, 40 Acres Each.
- 484.** Tribes to be Represented in Appraisement.
- 485.** Preference Right of Allotment.
- 486.** Restrictions Upon Alienation.
- 487.** Contracts—Leases.
- 488.** Disputes Settled by Commission.
- 489.** Patents.
- 490.** Railroads.
- 491.** Townsites.
- 492.** Failure of Owner of Improvements to Purchase.
- 493.** Sale at Public Auction.
- 494.** Payments, How Made.
- 495.** Unsold Lots Not Taxable.
- 496.** Townsite Money to be Divided Equally.
- 497.** Laws and Ordinances.
- 498.** Cemeteries.
- 499.** Townsite Expenses Not to be Paid by Tribes.
- 500.** Disposition of Reserved Lands.
- 501.** Lots Reserved for Churches, etc.
- 502.** Coal and Asphalt, Common Property.
- 503.** Jurisdiction Conferred on United States Courts.
- 504.** Certain Acts and Ordinances Not Effective Unless Approved by President.
- 505.** Tribal Governments to Continue for Eight Years.
- 506.** Per Capita Payments.
- 507.** Award of Court of Claims as to "Leased District" Final.
- 508.** Tribal Funds.
- 509.** United States Citizenship.
- 510.** Lands in Mississippi.

§ 479. **Parties to Agreement.**—This agreement, by between the Government of the United States, of the part, entered into in its behalf by the Commission to Five Civilized Tribes, Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Thomas B. Cabaniss, and Alexander B. Montgomery, duly appointed and authorized thereunto, and the governments of the Choctaw and Chickasaw tribes or nations of Indians in the Indian Territory, respectively, of the second part, entered into in behalf of the Choctaw and Chickasaw governments, duly appointed and authorized thereunto, viz: Green McCurtain, J. S. Stanton, N. B. Ainsworth, Ben Hampton, Wesley Anderson, A. Henry, D. C. Garland, and A. S. Williams, in behalf of the Choctaw Tribe or Nation, and R. M. Harris, I. O. L. Holmes Colbert, P. S. Mosely, M. V. Cheadle, R. L. Mu William Perry, A. H. Colbert, and R. L. Boyd, in behalf of the Chickasaw Tribe or Nation.

Witnesseth, That in consideration of the mutual undertakings, herein contained, it is agreed as follows:

§ 480. **Allotments Equal in Value.**—That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of these tribes so as to give to each member of these tribes so far as possible a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

That all the lands set apart for town sites, and the lands of land lying between the city of Fort Smith, Arkansas and the Arkansas and Poteau rivers, extending up said river to the mouth of Mill Creek; and six hundred and forty acres each, to include the buildings now occupied by the Bloomfield Academy, Tushkahoma Female Seminary, Wheelock Orphan Seminary, and Armstrong Orphan Academy, and ten acres for the capital building of the Choctaw Nation; one hundred and sixty acres each, immediately contiguous to and including the buildings known as Bloomfield Academy, Let

Orphan Home, Harley Institute, Rock Academy, and Collins Institute, and five acres for the capitol building in the Chickasaw Nation, and the use of one acre of land for each church house now erected outside of the towns, and eighty acres of land each for J. S. Murrow, H. R. Schermerhorn, and the widow of R. S. Bell, who have been laboring as missionaries in the Choctaw and Chickasaw nations since the year eighteen hundred and sixty-six, with the same conditions and limitations as apply to lands allotted to the members of the Choctaw and Chickasaw nations, and to be located on lands not occupied by a Choctaw or a Chickasaw, and a reasonable amount of land, to be determined by the town-site commission, to include all court-houses and jails and other public buildings not hereinbefore provided for, shall be exempted from division.

§ 481. **Coal and Asphalt Reserved.**—And all coal and asphalt in or under the lands allotted and reserved from allotment shall be reserved for the sole use of the members of the Choctaw and Chickasaw tribes, exclusive of freedmen: **Provided**, That where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the mine or party operating the same, before operations begin. That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, so far as possible, an equal value of the land: **Provided further**, That the Commission to the Five Civilized Tribes shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and

improvements, shall be allotted to each, to be selected, held and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by Act of Congress.

§ 482. **Allotments of Freedmen Deducted.**—That the lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under the agreement to the members of the Choctaw and Chickasaw tribe so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

§ 483. **Freedmen, Forty Acres Each.**—That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

§ 484. **Tribes to Be Represented in Appraisement.**—That in the appraisement of the lands to be allotted the Choctaw and Chickasaw tribes shall each have a representative, to be appointed by their respective executives, to co-operate with the Commission to the Five Civilized Tribes or any one making appraisements under the direction of the Secretary of the Interior in grading and appraising the lands preparatory to allotment. And the land shall be valued in the appraisement as if in its original condition, excluding the improvements thereon.

That the appraisement and allotment shall be made under the direction of the Secretary of the Interior, and shall begin as soon as the progress of the surveys, now being made by the United States Government, will admit.

§ 485. **Preference Right of Allotment.**—That each member of the Choctaw and Chickasaw tribes, including Choctaw and Chickasaw freedmen, shall, where it is possible, have the right to take his allotment on land, the improve-

which belong to him, and such improvements shall be estimated in the value of his allotment. In the case of children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order of birth, and shall not be sold during his minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care shall be taken that all persons entitled thereto have allotments made

Restrictions Upon Alienation.—All the lands allotted shall be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a tract of one hundred and sixty acres, for which he shall receive a separate patent, and which shall be inalienable for twenty-one years from date of patent. This provision shall apply to the Choctaw and Chickasaw freedmen to the extent of his allotment. Selections for homesteads shall be made as provided herein in case of allottees. The remainder of the lands allotted to said members shall be alienable for a price to be actually paid, and free of all former indebtedness or obligation—one-fourth the remainder in one year, one-fourth in three years, and the balance of said alienable lands in five years from the date of the patent.

Contracts—Leases.—That all contracts looking to a mortgage or incumbrance in any way of the land of an allottee except the sale hereinbefore provided, shall be null and void. No allottee shall lease his allotment, or any portion thereof, for a longer period than five years, and then only with the privilege of renewal. Every lease which is not made in writing, setting out specifically the terms and conditions, or which is not recorded in the clerk's office of the State court for the district in which the land is

§ 485

LANDS OF THE FIVE CIVILIZED TRIBES.

improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by Act of Congress.

§ 482. Allotments of Freedmen Deducted.—That the lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under the agreement to the members of the Choctaw and Chickasaw tribe so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

§ 483. Freedmen, Forty Acres Each.—That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

§ 484. Tribes to Be Represented in Appraisement. That in the appraisement of the lands to be allotted to the Choctaw and Chickasaw tribes shall each have a representative, to be appointed by their respective executives, co-operate with the Commission to the Five Civilized Tribes or any one making appraisements under the direction of the Secretary of the Interior in grading and appraising the lands preparatory to allotment. And the land shall be valued in the appraisement as if in its original condition, including the improvements thereon.

That the appraisement and allotment shall be made under the direction of the Secretary of the Interior, and shall begin as soon as the progress of the surveys, now being made by the United States Government, will admit.

§ 485. Preference Right of Allotment.—That each member of the Choctaw and Chickasaw tribes, including Choctaw and Chickasaw freedmen, shall, where it is possible, have the right to take his allotment on land, the improve-

its on which belong to him, and such improvements shall be estimated in the value of his allotment. In the case of minor children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estate, preference being given in the order desired, and shall not be sold during his minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care taken that all persons entitled thereto have allotments made for them.

486. Restrictions Upon Alienation.—All the lands allotted shall be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a homestead of one hundred and sixty acres, for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent. This provision shall also apply to the Choctaw and Chickasaw freedmen to the extent of his allotment. Selections for homesteads for minors to be made as provided herein in case of allotment, and the remainder of the lands allotted to said members shall be alienable for a price to be actually paid, and include no former indebtedness or obligation—one-fourth of said remainder in one year, one-fourth in three years, and the balance of said alienable lands in five years from the date of the patent.

487. Contracts—Leases.—That all contracts looking to the sale or incumbrance in any way of the land of an allottee, except the sale hereinbefore provided, shall be null and void. No allottee shall lease his allotment, or any portion thereof, for a longer period than five years, and then without the privilege of renewal. Every lease which is not evidenced by writing, setting out specifically the terms thereof, or which is not recorded in the clerk's office of the Federal States court for the district in which the land is

located, within three months after the date of its execution shall be void, and the purchaser or lessee shall acquire rights whatever by an entry or holding thereunder. no such lease or any sale shall be valid as against the allottee unless providing to him a reasonable compensation for the lands sold or leased.

§ 488. **Disputes Settled by Commission.**—That all controversies arising between the members of said tribes as to their right to have certain lands allotted to them shall be settled by the commission making the allotments.

That the United States shall put each allottee in possession of his allotment and remove all persons therefrom objectionable to the allottee.

That the United States shall survey and definitely mark and locate the ninety-eighth (98th) meridian of west longitude between Red and Canadian rivers before allotment of the lands herein provided for shall begin.

§ 489. **Patents.**—That as soon as practicable, after completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and seals of their respective nations, and deliver to each of the said allottees patents conveying to him all the right, title, and interest in the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphaltum in or under said land. Said patents shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to such patentee and no other land, and the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, as a relinquishment of all his right, title, and interest in and to any and all parts thereof, except the land emb

said patents, except also his interest in the proceeds of lands, coal, and asphalt herein excepted from allotment. That the United States shall provide by law for proper records of land titles in the territory occupied by the Choctaw and Chickasaw tribes.

490. Railroads.—The rights of way for railroads through the Choctaw and Chickasaw nations to be surveyed, set apart and platted to conform to the respective Acts of Congress granting the same in cases where said rights of way are defined by such Acts of Congress, but in cases where Acts of Congress do not define the same, then Congress is memorialized to definitely fix the width of said rights of way for station grounds and between stations, so that railroads now constructed through said nations shall have, as far as possible, uniform rights of way; and Congress is requested to fix uniform rates of fare and freight for railroads through the Choctaw and Chickasaw nations; such railroads now constructed and not built according to Acts of Congress to pay the same rates for rights of way and station grounds as main lines.

491. Town Sites.—It is further agreed that there shall be appointed a commission for each of the two nations. Each commission shall consist of one member to be appointed by the executive of the tribe for which said commission is to be appointed, who shall not be interested in town property other than his own, and one to be appointed by the President of the United States. Each of said commissions shall lay out town sites, to be restricted as far as possible to their present limits where towns are now located in the nation for which the commission is appointed. Said commission shall have ascertained correct and proper plats of each town, and file the same in the clerk's office of the United States district court in the district in which the town is located, and one with the principal chief or governor of the nation in which the town is located, and one with the Secretary of the Interior,

be approved by him before the same shall take effect. When said towns are so laid out, each lot on which permanent, substantial, and valuable improvements, other than fences, tillage, and temporary houses, have been made, shall be valued by the commission provided for the nation in which the town is located at the price a fee-simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon. The owner of the improvements on each lot shall have the right to buy one residence and one business lot at fifty per centum of the appraised value of such improved property, and the remainder of such improved property at sixty-two and one-half per centum of the said market value within sixty days from date of notice served on him that such lot is for sale, and if he purchases the same he shall, within ten days from his purchase, pay into the Treasury of the United States one-fourth of the purchase price, and the balance in three equal annual installments, and when the entire sum is paid shall be entitled to a patent for the same. In case the two members of the commission fail to agree as to the market value of any lot, or the limit or extent of said town, either of said commissioners may report any such disagreement to the judge of the district in which such town is located, who shall appoint a third member to act with said commission, who is not interested in town lots, who shall act with them to determine said value.

§ 492. **Failure of Owner of Improvements to Purchase.**—If such owner of the improvements on any lot fails within sixty days to purchase and make the first payment on said such lot, with the improvements thereon, shall be sold at public auction to the highest bidder, under the direction of the aforesaid commission, and the purchaser at such sale shall pay to the owner of the improvements the price at which said lot shall be sold, less sixty-two and one-half per cent of said appraised value of the lot, and shall pay the sixty-two and one-half per cent of said appraised value in

ted States Treasury, under regulations to be established the Secretary of the Interior, in four installments, as inbefore provided. The commission shall have the right reject any bid on such lot which they consider below its ie.

493. **Sale at Public Auction.**—All lots not so appraised ll be sold from time to time at public auction (after per advertisement) by the commission for the nation in ich the town is located, as may seem for the best interest the nations and the proper development of each town, purchase price to be paid in four installments as here-efore provided for improved lots. The commission shall ve the right to reject any bid for such lots which they sider below its value.

494. **Payments, How Made.**—All the payments herein vided for shall be made under the direction of the Sec-ry of the Interior into the United States Treasury, a ire of sixty days to make any one payment to be a for-are of all payments made and all rights under the con-t: **Provided,** That the purchaser of any lot shall have option of paying the entire price of the lot before the e is due.

495. **Unsold Lots Not Taxable.**—No tax shall be as-ed by any town government against any town lot un-by the commission, and no tax levied against a lot sold, erein provided, shall constitute a lien on same till the hase price thereof has been fully paid to the nation.

496. **Town-site Money to Be Divided Equally.**—The ey paid into the United States Treasury for the sale of own lots shall be for the benefit of the members of the law and Chickasaw tribes (freedmen excepted), and at nd of one year from the ratification of this agreement, at the end of each year thereafter, the funds so accu-

ing operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto a sufficient amount of land, to be determined by the town-site board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes: **And provided further,** That when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw tribes.

That whenever the members of the Choctaw and Chickasaw tribes shall be required to pay taxes for the support of schools, then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freed men excepted) in such manner as the tribes may direct.

§ 503. **Jurisdiction Conferred on United States Courts**—It is further agreed that the United States courts now existing, or that may hereafter be created, in the Indian Territory, shall have exclusive jurisdiction of all controversies growing out of the titles, ownership, occupation, possession, or use of real estate, coal, and asphalt in the territory occupied by the Choctaw and Chickasaw tribes; and of all persons charged with homicide, embezzlement, bribery, and embracery, breaches, or disturbances of the peace, and carrying weapons, hereafter committed in the territory of said tribes, without reference to race or citizenship of the person or persons charged with such crime; and any citizen or officer of the Choctaw or Chickasaw nations charged with such crime shall be tried, and, if convicted, punished as though he were a citizen or officer of the United States.

And sections sixteen hundred and thirty-six to sixteen hundred and forty-four, inclusive, entitled "Embezzlement," and sections seventeen hundred and eleven to seventeen hundred and eighteen, inclusive, entitled "Bribery,"

Embracery," of Mansfield's Digest of the laws of Arkansas, are hereby extended over and put in force in the Choctaw and Chickasaw nations; and the word "officer," as the same appears in said laws, shall include all officers of the Choctaw and Chickasaw governments; and the fifth section of the Act of Congress, entitled "An Act to establish United States courts in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, limiting jurors to citizens of the United States, shall be held not to apply to United States courts in the Indian Territory held within the limits of the Choctaw and Chickasaw nations; and all members of the Choctaw and Chickasaw tribes, otherwise qualified, shall be competent jurors in said courts: **Provided**, That whenever a member of the Choctaw and Chickasaw nations is indicted for homicide, he may, within thirty days after such indictment and his arrest thereon, and before the same is reached for trial, file with the clerk of the court in which he is indicted, his affidavit that he cannot get a fair trial in said court; and it thereupon shall be the duty of the judge of said court to order a change of venue in such case to the United States district court for the western district of Arkansas, at Fort Smith, Arkansas, or to the United States district court for the eastern district of Texas, at Paris, Texas, always selecting the court that in his judgment is the best or most convenient to the place where the crime charged in the indictment is supposed to have been committed, which courts shall have jurisdiction to try the case; and in all said civil suits said courts shall have full equity powers; and whenever it shall appear to said court, at any time in the hearing of any case, that the tribe is in any way interested in the subject-matter in controversy, it shall have power to summon in said tribe and make the same a party to the suit and proceed therein in all respects as if said tribe were an original party thereto; but in no case shall suit be instituted against the tribal government without its consent.

§ 504. **Certain Acts and Ordinances Not Effective Until Approved by President.**—It is further agreed that no ordinance, or resolution of the council of either the Choctaw or Chickasaw tribes, in any manner affecting the land of the tribe, or of the individuals, after allotment, or the moneys or other property of the tribe or citizens thereof (except appropriations for the regular and necessary expenses of the government of the respective tribes), or the rights of any persons to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the government thereof, then it shall be the duty of the national secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances, or resolutions, when so approved shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.

§ 505. **Tribal Governments to Continue for Eight Years.**—It is further agreed, in view of the modification of legislative authority and judicial jurisdiction herein provided and the necessity of the continuance of the tribal governments so modified, in order to carry out the requirements of this agreement, that the same shall continue for the period of eight years from the fourth day of March, eighteen hundred and ninety-eight. This stipulation is made on the belief that the tribal government so modified will prove so satisfactory that there will be no need or desire for further change till the lands now occupied by the Five Civilized Tribes shall, in the opinion of Congress, be prepared for admission as a State to the Union. But this p

on shall not be construed to be in any respect an abdication by Congress of power at any time to make needful laws and regulations respecting said tribes.

506. Per Capita Payments.—That all per capita payments hereafter made to the members of the Choctaw or Chickasaw nations shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to said Secretary.

That the following sum be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, for fulfilling treaty stipulations with the Chickasaw Nation of Indians, namely:

For arrears of interest, at five per centum per annum, from December thirty-first, eighteen hundred and forty, to December thirtieth, eighteen hundred and eighty-nine, on one hundred and eighty-four thousand one hundred and forty-five dollars and nine cents of the trust fund of the Chickasaw

Nation erroneously dropped from the books of the United States prior to December thirty-first, eighteen hundred and forty, and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and fifty-

and for arrears of interest at five per centum per annum, from March eleventh, eighteen hundred and fifty, to March third, eighteen hundred and ninety, on fifty-six thousand and twenty-one dollars and forty-nine cents of trust fund of the Chickasaw Nation erroneously dropped

from the books of the United States March eleventh, eighteen hundred and fifty, and restored December twenty-seventh, eighteen hundred and eighty-seven, by the award of the Secretary of the Interior, under the fourth article of the treaty of June twenty-second, eighteen hundred and eighty-two, five hundred and fifty-eight thousand five hun-

dred and twenty dollars and fifty-four cents, to be paid to the credit of the Chickasaw Nation with the fund which it properly belongs: **Provided,** That if there be attorneys' fees to be paid out of same, on contract heretofore made and duly approved by the Secretary of the Interior, the same is authorized to be paid by him.

§ 507. **Award of Court of Claims As to "Leased District" Final.**—It is further agreed that the final decision of the courts of the United States in the case of the Choctaw Nation and the Chickasaw Nation against the United States and the Wichita and affiliated bands of Indians, now pending, when made, shall be conclusive as the basis of settlement as between the United States and said Choctaw and Chickasaw nations for the remaining lands in what is known as the "Leased District," namely, the land lying between the ninety-eighth and one hundredth degrees of west longitude and between the Red and Canadian rivers, leased to the United States by the treaty of eighteen hundred and fifty-five, except that portion called the Cheyenne and Arapahoe country, heretofore acquired by the United States and all final judgments rendered against said nations by any of the courts of the United States in favor of the United States or any citizen thereof shall first be paid out of any sum hereafter found due said Indians for any interest they may have in the so-called leased district.

§ 508. **Tribal Funds.**—It is further agreed that out of the funds invested, in lieu of investment, trust funds, or otherwise, now held by the United States in trust for the Choctaw and Chickasaw tribes, shall be capita paid within one year after the tribal governments shall cease, so far as the same may legally be done, and be appropriated and paid, by some officer of the United States appointed for the purpose, to the Choctaws and Chickasaws (free persons excepted) per capita to aid and assist them in improving their homes and lands.

CHOCTAW-CHICKASAW ORIGINAL AGREEMENT § 510

1. **United States Citizenship.**—It is further agreed that the Choctaws and Chickasaws, when their tribal governments cease, shall become possessed of all the rights and privileges of citizens of the United States.

2. **Lands in Mississippi.**—It is further agreed that Choctaw orphan lands in the State of Mississippi, yet to be taken by the United States at one dollar and twenty-five cents (\$1.25) per acre, and the proceeds thereof to the credit of the Choctaw orphan fund in the Treasury of the United States, the number of acres to be determined by the General Land Office.

In witness whereof the said commissioners do hereunto set their names at Atoka, Indian Territory, this the twelfth day of April, eighteen hundred and ninety-seven.

McCurtain,
Principal Chief.

R. M. Harris,
Governor.

Handley,
Hinsworth,
Hampton,
Anderson,
Henry,
Farland,

Choctaw Commission.

Isaac O. Lewis,
Holmes Colbert,
Robert L. Murray,
William Perry,
R. L. Boyd,

Chickasaw Commission.

Frank C. Armstrong,
Acting Chairman.

Archibald S. McKennon,

Thomas B. Cabaniss,

Alexander B. Montgomery,

Commission to the Five Civilized Tribes.

H. M. Jacoway, Jr.,

Secretary, Five Tribes Commission.

CHAPTER XLIV.

CHOCTAW-CHICKASAW SUPPLEMENTAL AGREEMENT.

**Chap. 1362.—An Act to ratify and confirm an agr
with the Choctaw and Chickasaw tribes of I
and for other purposes. Adopted July 1, 190
fied September 25, 1902. (32 Stat. 641.)**

- § 511. Parties to Agreement.**
- 512. Definition "Nations" and "Tribes."**
- 513. Definition "Chief Executive."**
- 514. Definition "Member," "Members," "Citizen," "Citiz**
- 515. "Atoka Agreement."**
- 516. Definition "Minor."**
- 517. Definition "Select."**
- 518. Masculine to Include Feminine.**
- 519. Definition "Allottable Land."**
- 520. Allottable Land Appraised.**
- 521. Appraisement by Whom.**
- 522. Allotments to Members and Freedmen.**
- 523. Homestead—Restrictions.**
- 524. Freedmen Allotment—Restrictions.**
- 525. Residue of Tribal Lands.**
- 526. Alienation—Exemption.**
- 527. Surplus, When Alienable.**
- 528. Duty of Commission to Select.**
- 529. Smallest Legal Subdivision.**
- 530. Excessive Holding Prohibited.**
- 531. Excessive Holding—Penalty.**
- 532. Excessive Holding—Penalty.**
- 533. Death Before Selection, Descent.**
- 534. Allotment Certificates, Conclusive.**
- 535. Jurisdiction to Decide Allotment Controversies.**
- 536. Selection of Allotment.**
- 537. Arbitrary Allotment.**
- 538. Reservations.**
- 539. Rolls of Citizens and Freedmen.**
- 540. Members Living On Date of Ratification of Act.**

CHOCTAW-CHICKASAW SUPPLEMENTAL AGREEMENT § 511

- . **Members of Other Tribes Not to be Enrolled.**
- . **Rolls When Approved, Final.**
- . **Court Claimants.**
- . **Appellate Jurisdiction of Citizenship Court.**
- . **Citizenship Court.**
- . **Time for Application for Enrollment.**
- . **Only Enrolled Members to Participate.**
- . **Right of Chickasaw Freedmen Referred to Court of Claims.**
- . **Bill to be Filed by Attorney General.**
- . **Procedure.**
- . **Nations May Intervene.**
- . **Allotments to Chickasaw Freedmen.**
- . **Enrollment of Mississippi Choctaws.**
- . **Continuous Bona Fide Residence.**
- . **Application for Enrollment.**
- . **Failure to Make Proof of Residence.**
- . **Townsites.**
- . **Additional Acreage.**
- . **Townsites Hereafter Reserved.**
- . **Occupant Compensated for Improvements.**
- . **Vacancy in Townsite Commission.**
- . **Townsite Commissions.**
- . **Deeds to Town Lots.**
- . **Deeds to Purchasers.**
- . **Towns of Less Than Two Hundred People.**
- . **Townsites Set Aside Under Act May 31, 1900.**
- . **Municipal Corporations.**
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- . **Coal and Asphalt Within City Limits Under Lease.**
- . **Coal and Asphalt Lands Segregated.**
- . **Segregated Lands to be Sold.**
- . **Segregated Lands May be Sold Within Six Months.**
- . **Coal and Asphalt Lands Not to be Leased.**
- . **Sulphur Springs.**
- . **Acceptance of Patents by Minors and Incompetents.**
- . **Patents to be Recorded.**
- . **Section 3 of Curtis Act Repealed.**
- . **Supplemental Agreement Supercedes Curtis Act and Atoka Agreement.**
- . **Allotment Controversies.**
- . **Selection of Allotments for Minors, etc.**
- . **No Contest After Nine Months.**
- . **Per Capita Payments.**
- . **Agreement Binding When Ratified.**
- . **Canvass of Votes.**

That the following agreement, made by the Comm to the Five Civilized Tribes with the commissions i senting the Choctaw and Chickasaw tribes of Indian the twenty-first day of March, nineteen hundred and be, and the same is hereby, ratified and confirmed, to-

§ 511. **Parties to Agreement.**—This agreement, by between the United States, entered into in its beha Henry L. Dawes, Tams Bixby, Thomas B. Needles and ton R. Breckinridge, commissioners duly appointed an thorized thereunto, and the Choctaw and Chickasaw t of Indians in Indian Territory, respectively, entered in behalf of such Choctaw and Chickasaw tribes, by Gi W. Dukes, Green McCurtin, Thomas E. Sanguin, and S E. Lewis in behalf of the Choctaw tribe of Indians; Douglas H. Johnston, Calvin J. Grant, Holmes Willis, ward B. Johnson and Benjamin H. Colbert in behalf o Chickasaw tribe of Indians, commissioners duly appoi and authorized thereunto—

Witnesseth that, in consideration of the mutual u takings herein contained, it is agreed as follows:

§ 512. **Definition “Nations” and “Tribes.”**—1. V ever used in this agreement the words “nations” “tribes” shall each be held to mean the Choctaw Chickasaw nations or tribes of Indians in Indian Terr

§ 513. **Definition “Chief Executives.”**—2. The v “chief executives” shall be held to mean the pri chief of the Choctaw Nation and the governor of the C saw Nation.

§ 514. **Definition “Member,” “Members,” “Cit “Citizens.”**—3. The words “member” or “members “citizen” or “citizens” shall be held to mean memb citizens of the Choctaw or Chickasaw tribe of Indi Indian Territory, not including freedmen.

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515. **"Atoka Agreement."**—4. The term "Atoka Agreement" shall be held to mean the agreement made by Commission to the Five Civilized Tribes with the commissioners representing the Choctaw and Chickasaw tribes Indians at Atoka, Indian Territory, and embodied in the act of Congress, approved June twenty-eighth, eighteen hundred and ninety-eight. (30 Stats. 495.)

§ 516. **Definition "Minor."**—5. The word "minor" shall be held to mean males under the age of twenty-one years and females under the age of eighteen years.

§ 517. **Definition "Select."**—6. The word "select" and its various modifications, as applied to allotments and homesteads, shall be held to mean the formal application at the land office, to be established by the Commission to the Five Civilized Tribes for the Choctaw and Chickasaw nations, of particular tracts of land.

§ 518. **Masculine to Include Feminine.**—7. Every word in this agreement importing the masculine gender may extend and be applied to females as well as males, and the word of the plural may include also the singular and vice versa.

519. **Definition "Allottable Land."**—8. The terms "allottable lands" or "lands allottable" shall be deemed to mean all the lands of the Choctaw and Chickasaw tribes herein reserved from allotment.

520. **Allottable Land Appraised.**—9. All lands belonging to the Choctaw and Chickasaw tribes in the Indian Territory, except such as are herein reserved from allotment, shall be appraised at their true value: **Provided,** That in determining such value consideration shall not be given to the location thereof, to any mineral deposits, or to any timber except such pine timber as may have been heretofore

estimated by the Commission to the Five Civilized Tribes and without reference to improvements which may be located thereon.

§ 521. **Appraisement By Whom.**—10. The appraisement as herein provided shall be made by the Commission to the Five Civilized Tribes, and the Choctaw and Chickasaw tribes shall each have a representative to be appointed by the respective executives to co-operate with the said Commission.

§ 522. **Allotments to Members and Freedmen.**—11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations; to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allotments and designating homesteads hereunder, the forty-acre or quarter-quarter subdivisions established by the Government survey may be dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres or a quarter of a quarter of a quarter of a section.

§ 523. **Homestead Restrictions.**—12. Each member of said tribes shall, at the time of the selection of his allotment, designate as a homestead out of said allotment land equal in value to one hundred and sixty acres of the average allottable land of the Choctaw and Chickasaw nations

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as nearly as may be, which shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment, and separate certificate and patent shall issue for said homestead.

§ 524. **Freedman Allotment—Restrictions.**—13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate of allotment.

§ 525. **Residue of Tribal Lands.**—14. When allotments as herein provided have been made to all citizens and freedmen, the residue of lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations and on terms to be prescribed by the Secretary of the Interior, and so much of the proceeds as may be necessary for equalizing allotments shall be used for that purpose, and the balance shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and distributed per capita as other funds of the tribes.

§ 526. **Alienation—Exemption.**—15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this Act, nor shall said lands be sold except as herein provided.

§ 527. **Surplus, When Alienable.**—16. All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One-fourth in acreage in one year, one-fourth in acreage in three years, and the balance in five years; in each case from date of patent: **Provided, That** such land shall not be alienable by

the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for more than its appraised value.

§ 528. **Duty of Commission to Select.**—17. If, for any reason, an allotment should not be selected or a home tract designated by, or on behalf of, any member or freedman, it shall be the duty of said Commission to make said selection and designation.

§ 529. **Smallest Legal Subdivision.**—18. In the making of allotments and in the designation of homestead tracts for members of said tribes, under the provisions of this agreement, said Commission shall not be required to divide lands into tracts of less than the smallest legal subdivision provided for in paragraph eleven hereof.

§ 530. **Excessive Holding Prohibited.**—19. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any member of the Choctaw or Chickasaw tribes to enclose or hold possession of in any manner by himself or through another, directly or indirectly, more lands in value than that of three hundred and twenty acres of average allottable lands of the Choctaw and Chickasaw nations as provided by the terms of the agreement, either for himself or for his wife, or for each of his minor children if members of said tribes; and any member of said tribes found in such possession of lands, or holding the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of the agreement, shall be deemed guilty of a misdemeanor.

§ 531. **Excessive Holding—Penalty.**—20. It shall be unlawful after ninety days after the date of the final ratification of this agreement for any Choctaw or Chickasaw Indian man to enclose or hold possession of in any manner, by himself or through another, directly or indirectly, more

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so much land as shall be equal in value to forty acres of the average allottable lands of the Choctaw and Chickasaw tribes as provided by the terms of this agreement, either for himself or for his wife, or for each of his minor children, if they be Choctaw or Chickasaw freedmen; and any freedman found in such possession of lands, or having the same in any manner enclosed after the expiration of ninety days after the date of the final ratification of this agreement, shall be deemed guilty of a misdemeanor.

§ 532. **Excessive Holding—Penalty.**—21. Any person convicted of violating any of the provisions of sections 19 and 20 of this agreement shall be punished by a fine of not less than one hundred dollars, and shall stand committed until such fine and costs are paid (such commitment not to exceed one day for every two dollars of such fine and costs) and shall forfeit possession of any property in question, and each day on which such offense is committed or continues to exist, shall be deemed a separate offense. And the United States district attorneys for the districts in which said nations are situated, are required to see that the provisions of said sections are strictly enforced, and they shall immediately after the expiration of ninety days after the date of the final ratification of this agreement proceed to dispossess all persons of such excessive holdings of lands, and to prosecute them for so unlawfully holding the same. And the Commission to the Five Civilized Tribes shall have authority to make investigation of all violations of sections 19 and 20 of this agreement, and make report thereon to United States district attorneys.

533. **Death Before Selection—Descent.**—22. If any person whose name appears upon the rolls, prepared as herein provided, shall have died subsequent to the ratification of this agreement and before receiving his allotment and the lands to which such person would have been entitled if living shall be allotted in his name, and shall, to-

gether with his proportionate share of other tribal
erty, descend to his heirs according to the laws of d
and distribution as provided in Chapter forty-nine of
field's Digest of the Statutes of Arkansas: **Provided**
the allotment thus to be made shall be selected by a
appointed administrator or executor. If, however,
administrator or executor be not duly and expedit
appointed, or fails to act promptly when appointed,
any other cause such selection be not so made within
sonable and practicable time, the Commission to the
Civilized Tribes shall designate the lands thus to
lotted.

§ 534. **Allotment Certificates—Conclusive.—23.**
ment certificates issued by the Commission to the
Civilized Tribes shall be conclusive evidence of the ri
any allottee to the tract of land described therein; an
United States Indian agent at the Union Agency shall,
the application of the allottee, place him in possessi
his allotment, and shall remove therefrom all person
jectionable to such allottee and the acts of the Indian
hereunder shall not be controlled by the writ or proc
any court.

§ 535. **Jurisdiction to Decide Allotment Contro**
—24. Exclusive jurisdiction is hereby conferred upo
Commission to the Five Civilized Tribes to determine,
the direction of the Secretary of the Interior, all m
relating to the allotment of land.

§ 536. **Selection of Allotment.—25.** After the op
of a land office for allotment purposes in both the Ch
and the Chickasaw nations any citizen or freedman of
of said nations may appear before the Commission t
Five Civilized Tribes at the land office in the nation in
his land is located and make application for his allo
and for allotments for members of his family and for
persons for whom he is lawfully authorized to apply

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lotments, including homesteads, and after the expiration of ninety days following the opening of such land offices any such applicant may make allegation that the land or any part of the land that he desires to have allotted is held by another citizen or person in excess of the amount of land to which said citizen or person is lawfully entitled, and that he desires to have said land allotted to him or members of his family as herein provided; and thereupon said Commission shall serve notice upon the person so alleged to be holding land in excess of the lawful amount to which he may be entitled, said notice to set forth the facts alleged and the name and postoffice address of the person alleging the same, and the rights and consequences herein provided, and the person so alleged to be holding land contrary to law shall be allowed thirty days from the date of the service of said notice in which to appear at one of said land offices and to select his allotment and the allotments he may be lawfully authorized to select, including homesteads; and if at the end of the thirty days last provided for the person upon whom said notice has been served has not selected his allotment and allotments as provided, then the Commission to the Five Civilized Tribes shall immediately make or reserve said allotments for the person or persons who have failed to act in accordance with the notice aforesaid, having due regard for the best interest of said allottees; and after such allotments have been made or reserved by said Commission, then all other lands held or claimed, or previously held or claimed by said person or persons, shall be deemed a part of the public domain of the Choctaw and Chickasaw nations and be subject to disposition as such: **Provided**, That any persons who have previously applied for any part of said lands shall have a prior right of allotment of the same in the order of their applications and as their lawful rights may appear.

§ 537. **Arbitrary Allotment.**—If any citizen or freedman of the Choctaw and Chickasaw nations shall not have se-

lected his allotment within twelve months after the date of the opening of said land offices in said nations, if not herein otherwise provided, and provided that twelve months shall have elapsed from the date of the approval of his enrollment by the Secretary of the Interior, then the Commission to the Five Civilized Tribes may immediately proceed to select an allotment, including a homestead for such person, said allotment and homestead to be selected as the Commission may deem for the best interest of said person, and the same shall be of the same force and effect as if such selection had been made by such citizen or freedman in person, and all lands held or claimed by persons for whom allotments have been selected by the Commission as provided, and in excess of the amount included in said allotments, shall be a part of the public domain of the Choctaw and Chickasaw nations and be subject to disposition as such.

§ 538. **Reservations.**—26. The following lands shall be reserved from the allotment of lands herein provided for:

(a) All lands set apart for town sites either by the terms of the Atoka agreement, the Act of Congress of May 31, 1900 (31 Stats., 221), as herein assented to, or by the terms of this agreement.

(b) All lands to which, at the date of the final ratification of this agreement, any railroad company may under any treaty or Act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses connected with the maintenance and operation of the railroad.

(c) The strip of land lying between the city of Fort Smith, Arkansas, and the Arkansas and Poteau rivers, extending up the said Poteau River to the mouth of Mill Creek.

(d) All lands which shall be segregated and reserved by the Secretary of the Interior on account of their coal

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asphalt deposits, as hereinafter provided. And the lands ceded by the Secretary of the Interior at and in the vicinity of Sulphur in the Chickasaw Nation, under the cession to the United States hereunder made by said tribes.

- e) One hundred and sixty acres for Jones' Academy.
- f) One hundred and sixty acres for Tuskahoma Female Seminary.
- (g) One hundred and sixty acres for Wheelock Orphan Asylum.
- (h) One hundred and sixty acres for Armstrong Orphan Asylum.
- (i) Five acres for capitol building of the Choctaw Nation.
- (j) One hundred and sixty acres for Bloomfield Academy.
- (k) One hundred and sixty acres for Lebanon Orphan Asylum.
- (l) One hundred and sixty acres for Harley Institute.
- (m) One hundred and sixty acres for Rock Academy.
- (n) One hundred and sixty acres for Collins Institute.
- (o) Five acres for the capitol building of the Chickasaw Nation.
- (p) Eighty acres for J. S. Murrow.
- (q) Eighty acres for H. R. Schermerhorn.
- (r) Eighty acres for the widow of R. S. Bell.
- (s) A reasonable amount of land, to be determined by the town-site commissioners, to include all tribal court-houses and jails and other tribal public buildings.
- t) Five acres for any cemetery located by the town-site commissioners prior to the date of the final ratification of this agreement.

(u) One acre for any church under the control of used exclusively by the Choctaw or Chickasaw citizen the date of the final ratification of this agreement.

(v) One acre each for all Choctaw or Chickasaw school under the supervision of the authorities of the Choctaw Chickasaw nations and officials of the United States.

And the acre so reserved for any church or school in a quarter section of land shall be located when practicable a corner of such quarter section lying adjacent to the section line thereof.

§ 539. **Rolls of Citizens and Freedmen.**—27. The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission of the Five Civilized Tribes, in strict compliance with the Act of Congress approved June 28, 1898 (30 Stats. 495), and the Act of Congress approved May 31, 1900 (31 Stats. 221), except as herein otherwise provided: **Provided,** That no person claiming right to enrollment and allotment and distribution of tribal property, by virtue of a judgment of the United States court in the Indian Territory under the Act of June 10, 1896 (29 Stats. 321), and which right is contested in legal proceedings instituted under the provisions of this agreement, shall be enrolled or receive allotment of land or distribution of tribal property until his right thereto has been finally determined.

§ 540. **Members Living on Date of Ratification of Agreement.**—28. The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in section 27 hereof shall be placed upon the rolls made by said Commission; and no child born thereafter shall be a citizen or freedman and no person intermarried thereafter to a citizen shall be entitled to enrollment or to participation in the distribution of the tribal property of the Choctaw and Chickasaws.

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541. Members of Other Tribes Not to Be Enrolled.—No person whose name appears upon the rolls made by Commission to the Five Civilized Tribes as a citizen or dman of any other tribe shall be enrolled as a citizen or dman of the Choctaw or Chickasaw nations.

542. Rolls When Approved Final.—30. For the pur-
e of expediting the enrollment of the Choctaw and
ekasaw citizens and Choctaw and Chickasaw freedman,
said Commission shall, from time to time, and as early
practicable, forward to the Secretary of the Interior lists
on which shall be placed the names of those persons
md by the Commission to be entitled to enrollment. The
s thus prepared, when approved by the Secretary of the
erior, shall constitute a part and parcel of the final rolls
citizens of the Choctaw and Chickasaw tribes and of
etaw and Chickasaw freedmen, upon which allotment
and and distribution of other tribal property shall be
e as herein provided. Lists shall be made up and for-
led when contests of whatever character shall have been
rmined, and when there shall have been submitted to
approved by the Secretary of the Interior lists embrac-
names of all those lawfully entitled to enrollment, the
shall be deemed complete. The rolls so prepared shall
ade in quintuplicate, one to be deposited with the Sec-
y of the Interior, one with the Commissioner of Indian
irs, one with the principal chief of the Choctaw Nation,
with the governor of the Chickasaw Nation, and one to
in with the Commission to the Five Civilized Tribes.

543. Court Claimants.—31. It being claimed and
ted by the Choctaw and Chickasaw nations that
United States courts in the Indian Territory, acting
er the Act of Congress approved June 10, 1896, have
itted persons to citizenship or to enrollment as such
ens in the Choctaw and Chickasaw nations, respectively,
out notice of the proceedings in such courts being given

to each of said nations; and it being insisted by said nation that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States court in the Indian Territory, under the said Act of June 10, 1898, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant may, within ninety days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship

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rollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated shall, upon written application therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers and proceedings, and upon the filing in such citizenship court of the files, papers and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and if no judgment or decision had been rendered therein.

§ 544. Appellate Jurisdiction of Citizenship Court.—

Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said Act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting separately at any time within six months after this agreement is finally ratified. At the exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review, and reverse all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment sub-

stantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under said act denying claims to citizenship or to enrollment of citizens in either of said nations. Such appeals shall be taken, within the time hereinbefore specified, and shall be taken, conducted and disposed of in the same manner as appeals by the said nations, save that notice of appeals to citizenship claimants shall be served upon the chief executive officer of both nations: **Provided**, That paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this Act by Congress.

§ 545. **Citizenship Court.**—33. A court is hereby created to be known as the Choctaw and Chickasaw Citizenship Court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and thirteen. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a Circuit Court of the United States in compelling the production of books, papers and documents, the attendance of witnesses, and in punishing contempt. Except where herein otherwise expressly provided, the pleading, practice and proceedings in said court shall conform,

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as may be, to the pleadings, practice and proceedings in equity causes in the Circuit Courts of the United States. The testimony shall be taken in court or before one of the judges, so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, a stenographer, who shall be deputy clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum, and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer, and bailiff shall be appointed by the judges, or a majority of them, and shall receive the following yearly compensation: Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensation are hereby appropriated, and there is also hereby appropriated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for service of process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpoenaed, and the rate or amount of such fees

shall be the same as is allowed in civil causes in the court of the United States for the western district of Kansas. No fees shall be charged by the clerk or officers of said court. The clerk of the United States in Indian Territory, having custody and control of the papers and proceedings in the original citizenship case, shall receive a fee of two dollars and fifty cents for transmitting and certifying to the citizenship court the files, papers and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and such fee shall be paid by the person applying for such transfer and certification. The judgment of the citizenship court in all of the suits or proceedings so committed to its jurisdiction shall be final. All expenses necessary to the conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States.

§ 546. **Time for Application for Enrollment.**—34. Within the ninety days first following the date of the final ratification of this agreement, the Commission to the Five Civilized Tribes may receive applications for enrollment of persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said commission, including only known as "delinquents," and such intermarried white persons as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs and usages on or before the date of the passage of this Act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement; but the application of no person whomsoever

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allment shall be received after the expiration of the said ninety days: **Provided**, That nothing in this section shall apply to any person or persons making application for enrollment as Mississippi Choctaws, for whom provision has been otherwise made.

§ 547. Only Enrolled Members to Participate.—35. No person whose name does not appear upon the rolls prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Choctaw and Chickasaw tribes, and those whose names appear thereon shall participate in the manner set forth in this agreement: **Provided**, That no allotment of land or other tribal property shall be made to any person, or to the heirs of any person whose name is on the said rolls, and who died prior to the date of the final ratification of this agreement. The right of such person to any interest in the lands or other tribal property shall be deemed to have become extinguished and to have passed to the tribe in general upon his death before the date of the final ratification of this agreement, and any person or persons who may conceal the death of anyone on said rolls as aforesaid, for the purpose of profiting by the said concealment, and who shall knowingly receive any portion of any land or other tribal property, or of the proceeds so arising from any allotment prohibited by this section, shall be deemed guilty of a felony, and shall be proceeded against as may be provided in other cases of felony, and the penalty for this offense shall be confinement at hard labor for a period of not less than one year nor more than five years, and, in addition thereto, a forfeiture to the Choctaw and Chickasaw nations of the lands, other tribal property, and proceeds so obtained.

§ 548. Rights of Chickasaw Freedmen Referred to Court of Claims.—36. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the

Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

§ 549. **Bill to Be Filed by Attorney General.**—37. To that end the Attorney General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims, within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

§ 550. **Procedure.**—38. Service of process in the suit may be had on the Choctaw and Chickasaw nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, with the time for answering the same, for a period of three weeks in at least two weekly newspapers having general circulation in the Chickasaw Nation.

§ 551. **Nations May Intervene.**—39. The Choctaw and Chickasaw nations, respectively, may in the manner prescribed in sections twenty-one hundred and three to twenty



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one hundred and six, both inclusive, of the Revised Statutes, employ counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the Chickasaw freedmen, including all costs of printing their briefs and other incidental expenses on their part, not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court, and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

§ 552. Allotments to Chickasaw Freedmen.—40. In the meantime the Commission to the Five Civilized Tribes shall make a roll of the Chickasaw freedmen and their descendants, as provided in the Atoka agreement, and shall make allotments to them as provided in this agreement, which said allotments shall be held by the said Chickasaw freedmen, not as temporary allotments, but as final allotments, and in the event that it shall be finally determined in said suit that the Chickasaw freedmen are not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw and Chickasaw nations according to their respective interests, and against the United States, the value of the lands so allotted to the Chickasaw freedmen as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, which decree shall take the place of the said suit and shall be in full satisfaction of all claims by the Choctaw and Chickasaw nations against the United States

or the said freedmen on account of the taking of the said lands for allotment to said freedmen: **Provided**, That nothing contained in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

§ 553. **Enrollment of Mississippi Choctaws.**—41. All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the Act of Congress approved June 28, 1898 (30 Stats. 495), as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification as Mississippi Choctaws by the said Commission, make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such Commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such Commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions here provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said Commission after six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Choctaw Indians whether full or mixed blood who received a patent to land under the said fourteenth article of the said treaty of eight hundred and thirty who had not moved to and made bona fide settlement in the Choctaw-Chickasaw country prior to June twenty-eighth, eighteen hundred and ninety-eight shall be deemed to be Mississippi Choctaws, entitled to be

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under article fourteen of the said treaty of September twenty-seventh, eighteen hundred and thirty, and to identification as such by said Commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw nation, all of said Mississippi Choctaws so enrolled by said Commission shall be upon a separate roll.

§ 554. Continuous Bona Fide Residence.—42. When any such Mississippi Choctaw shall have in good faith continuously resided upon the lands of the Choctaw and Chickasaw nations for a period of three years, including his residence thereon before and after such enrollment, he shall, on due proof of such continuous, bona fide residence, made in such manner and before such officer as may be designated by the Secretary of the Interior, receive a patent for allotment, as provided in the Atoka agreement, and he shall hold the lands allotted to him as provided in this agreement for citizens of the Choctaw and Chickasaw nations.

§ 555. Application for Enrollment.—43. Applications for enrollment as Mississippi Choctaws, and applications to have land set apart to them as such, must be made personally before the Commission to the Five Civilized Tribes. Others may apply for their minor children; and if the father be dead, the mother may apply; husbands may apply for wives. Applications for orphans, insane persons, and persons of unsound mind may be made by duly appointed guardian or curator, and for aged and infirm persons and minors by agents duly authorized thereunto by power of attorney, in the discretion of said Commission.

§ 556. **Failure to Make Proof of Residence.**—44. within four years after such enrollment any such Mississippi Choctaw, or his heirs or representatives if he be fails to make proof of such continuous bona fide residence for the period so prescribed, or up to the time of the death of such Mississippi Choctaw, in case of his death after enrollment, he, and his heirs and representatives if he be, shall be deemed to have acquired no interest in the land set apart to him, and the same shall be sold at public auction for cash, under rules and regulations prescribed by the Secretary of the Interior, and the proceeds paid into the Treasury of the United States to the credit of the Choctaw and Chickasaw tribes, and distributed per capita with the funds of the tribes. Such lands shall not be sold for less than their appraised value. Upon payment of the full purchase price patent shall issue to the purchaser.

§ 557. **Town Sites.**—45. The Choctaw and Chickasaw tribes hereby assent to the Act of Congress approved May 31, 1900 (31 Stats. 221), in so far as it pertains to town sites in the Choctaw and Chickasaw nations ratifying and affirming all acts of the Government of the United States thereunder, and consent to a continuance of the provisions of said act not in conflict with the terms of this agreement.

§ 558. **Additional Acreage.**—46. As to those town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, as provided in said Act of Congress of May 31, 1900, such additional acreage may be added thereto, in like manner as the original town site was set apart, as may be necessary for the present needs and reasonable prospective growth of said town sites, the total acreage not to exceed six hundred and forty acres for each town site.

§ 559. **Town Sites Hereafter Reserved.**—47. The lands which may hereafter be set aside and reserved for

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upon the recommendation of the Commission to the Civilized Tribes, under the provisions of said Act of May 31, 1900, shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, not to exceed six hundred and ten acres for each town site.

560. Occupant Compensated for Improvements.—48. Whenever any tract of land shall be set aside for town-site purposes, as provided in said Act of May 31, 1900, or the terms of this agreement, which is occupied by any member of the Choctaw or Chickasaw nations, such occupant shall be fully compensated for his improvements thereon, out of the funds of the tribes arising from the sale of town sites, under rules and regulations to be prescribed by the Secretary of the Interior, the value of such improvements to be determined by a board of appraisers, one member of which shall be appointed by the Secretary of the Interior, one by the chief executive of the tribe in which the town site is located, and one by the occupant of the land, the board of appraisers to be paid such compensation for their services as may be determined by the Secretary of the Interior out of any appropriation for surveying, laying out, and selling town sites.

61. Vacancy in Town-site Commission.—49. Whenever the chief executive of the Choctaw or Chickasaw Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or default of the town-site commissioner appointed by the chief executive of the Choctaw or Chickasaw Nation to qualify, or otherwise, the Secretary of the Interior, in his discretion, may appoint a commissioner to fill the vacancy created.

62. Town-site Commission.—50. There shall be appointed, in the manner provided in the Atoka agreement,



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such additional town-site commissions as the Secretary the Interior may deem necessary, for the speedy disposition of all town sites in said nations: **Provided**, That the jurisdiction of said additional town-site commissions shall extend to such town sites only as shall be designated by Secretary of the Interior.

§ 563. Deeds to Town Lots.—51. Upon the payment of the full amount of the purchase price of any lot in any town site in the Choctaw and Chickasaw nations, appraised and sold as herein provided, or sold as herein provided, the executives of said nations shall jointly execute, under their hands and seals of the respective nations and deliver to the purchaser of the said lot, a patent conveying to him the right, title, and interest of the Choctaw and Chickasaw tribes in and to said lot.

§ 564. Deeds to Purchasers.—52. All town lots in any one town site to be conveyed to one person shall, as far as practicable, be included in one patent, and all patents shall be executed free of charge to the grantee.

§ 565. Towns of Less Than Two Hundred People. Such towns in the Choctaw and Chickasaw nations as have a population of less than two hundred people, and otherwise provided for, and which in the judgment of the Secretary of the Interior should be set aside as town sites shall have their limits defined not later than ninety days after the final ratification of this agreement, in the manner as herein provided for other town sites; but in such case shall more than forty acres of land be set aside for any such town site.

§ 566. Town Sites Set Aside Under Act May 31, 1854. All town sites heretofore set aside by the Secretary of the Interior on the recommendation of the Commission to the Five Civilized Tribes, under the provisions of the

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ongress approved May 31, 1900 (31 Stat. 221), with the tional acreage added thereto, and all town sites which hereafter be set aside, as well as all town sites set aside r the provisions of this agreement having a population ss than two hundred, shall be surveyed, laid out, platted, aised, and disposed of in like manner, and with like erence rights accorded to owners of improvements as r town sites in the Choctaw and Chickasaw nations are eyed, laid out, platted, appraised, and disposed of un- the Atoka agreement, as modified or supplemented by said Act of May 31, 1900: **Provided**, That occupants or hasers of lots in town sites in said Choctaw and Chick- nations upon which no improvements have been made : to the passage of this act by Congress shall pay the appraised value of said lots instead of the percentage ed in the Atoka agreement.

567. Municipal Corporations.—55. Authority is hereby erred upon municipal corporations in the Choctaw and kasaw nations, with the approval of the Secretary of Interior, to issue bonds and borrow money thereon for ary purposes and for the construction of sewers, light- plants, waterworks, and schoolhouses, subject to all the isions of laws of the United States in force in the or- zed Territories of the United States in reference to icipal indebtedness and issuance of bonds for public oses; and said provisions of law are hereby put in force id nations and made applicable to the cities and towns ain the same as if specially enacted in reference thereto; said municipal corporations are hereby authorized to te streets and alleys or parts thereof, and said streets alleys, when so vacated, shall become the property of adjacent property holders.

568. Coal and Asphalt Within City Limits Sold.—56. the expiration of two years after the final ratification his agreement all deposits of coal and asphalt which are

in lands within the limits of any town site established under the Atoka agreement, or the Act of Congress of 1890, or this agreement, and which are within the exterior limits of any lands reserved from allotment on account of their coal or asphalt deposits, as herein provided, which are not at the time of the final ratification of the agreement embraced in any then existing coal or asphalt lease, shall be sold at public auction for cash under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as herein provided respecting the proceeds of the sale of coal and asphalt lands.

§ 569. **Coal and Asphalt Within City Under Lease.**—All coal and asphalt deposits which are within the limits of any town site so established, which are at the date of the final ratification of this agreement covered by any existing lease, shall, at the expiration of two years after the final ratification of this agreement, be sold at public auction under the direction of the President as hereinafter provided, and the proceeds thereof disposed of as provided in the preceding section. The coal or asphalt covered by the lease shall be separately sold. The purchaser shall take the coal or asphalt deposits subject to the existing lease, and shall by the purchase succeed to all the rights of the tribes of every kind and character, under the lease, but the advanced royalties received by the tribe shall be retained by them.

§ 570. **Coal and Asphalt Lands Segregated.**—58. Within six months after the final ratification of this agreement the Secretary of the Interior shall ascertain, so far as may be practicable, what lands are principally valuable because of their deposits of coal or asphalt, including therein all lands which at the time of the final ratification of this agreement shall be covered by then existing coal or asphalt leases; and within that time he shall, by a written order, segregate and reserve from allotment all of said lands. Such segregation

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ad reservation shall conform to the subdivisions of the overnment survey as nearly as may be, and the total segregation and reservation shall not exceed five hundred thousand acres. No lands so reserved shall be allotted to any member of freedmen, and the improvements of any member or freedman existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior. All coal and asphalt deposits, as well as other minerals which may be found in any lands not so segregated and reserved, shall be deemed a part of the land and shall pass to the allottee or other person who may lawfully acquire title to such lands.

§ 571. Segregated Lands to Be Sold.—59. All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a town site, established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the Principal Chief of the Choctaw Nation, who shall be Choctaw by blood, and one on the recommendation of the Governor of the Chickasaw Nation, who shall be a Chickasaw by blood. Either of said commissioners may, at any time, be removed by the President for good cause shown. Each of said commissioners shall be paid at the rate of four thousand dollars per annum, the Choctaw commissioner to be paid by the Choctaw Nation, the Chickasaw commissioner to be paid by the Chickasaw Nation, and the third commissioner to be paid by the United States. In the sale of coal and asphalt lands and coal and asphalt deposits here-

under, the commission shall have the right to reject all bids which it considers below the value of any such lands or deposits. The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the manner provided by law. The lands embraced within any coal or asphalt lease shall be separately sold, subject to such lease, and the purchaser shall succeed to all the rights of the two tribes of every land and character, under the lease, but all advanced royalties received by the tribes shall be retained by them. The lands so segregated and reserved, and not included within any existing coal or asphalt lease, shall be sold in tracts not exceeding in area a section under the Government survey.

§ 572. **Segregated Lands May Be Sold Within Months.**—60. Upon the recommendation of the chief executive of each of the two tribes, and where in the judgment of the President it is advantageous to the tribes so to the sale of any coal or asphalt lands which are herein directed to be sold may be made at any time after the expiration of six months from the final ratification of this agreement, without awaiting the expiration of the period of five years, as hereinbefore provided.

§ 573. **Coal and Asphalt Lands Not to Be Leased.** No lease of any coal or asphalt lands shall be made before the final ratification of this agreement, the provisions of the Atoka agreement to the contrary notwithstanding.

62. Where any lands so as aforesaid segregated and reserved on account of their coal or asphalt deposits are within this agreement specifically reserved from allotment for any other reason, the sale to be made hereunder shall be of the coal and asphalt deposits contained therein, and

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ll other respects the other specified reservation of such
ands herein provided for shall be fully respected.

63. The two executives of the two tribes shall execute
nd deliver, with the approval of the Secretary of the Inte-
rior, to each purchaser of any coal or asphalt lands so sold,
nd to each purchaser of any coal or asphalt deposits so sold,
n appropriate patent or instrument of conveyance, convey-
ing to the purchaser the property so sold.

§ 574. **Sulphur Springs.**—64. The two tribes hereby
solutely and unqualifiedly relinquish, cede, and convey
to the United States a tract or tracts of land at and in
a vicinity of the village of Sulphur, in the Chickasaw
ation, of not exceeding six hundred and forty acres, to be
ected, under the direction of the Secretary of the Inte-
r, within four months after the final ratification of this
reement, and to embrace all the natural springs in and
out said village, and so much of Sulphur Creek, Rock
eek, Buckhorn Creek, and the lands adjacent to said nat-
al springs and creeks as may be deemed necessary by the
cretary of the Interior for the proper utilization and con-
ol of said springs and the waters of said creeks, which
nds shall be so selected as to cause the least interference
th the contemplated town site at that place consistent
th the purposes for which said cession is made, and when
ected the ceded lands shall be held, owned, and controlled
the United States absolutely and without any restriction,
ve that no part thereof shall be platted or disposed of
r town-site purposes during the existence of the two tribal
vernments. Such other lands as may be embraced in a
wn site at that point shall be disposed of in the manner
vided in the Atoka agreement for the disposition of town
es. Within ninety days after the selection of the land
eeded there shall be deposited in the Treasury of the
ited States, to the credit of the two tribes, from the un-
ropriated public moneys of the United States, twenty

dollars per acre for each acre so selected, which shall be full compensation for the lands so ceded, and such money shall, upon the dissolution of the tribal governments, be divided per capita among the members of the tribes, fifteen men excepted, as are other funds of the tribes. All improvements upon the lands so selected which were lawfully made at the time of the ratification of this agreement by Congress shall be appraised, under the direction of the Secretary of the Interior, at the true value thereof at the time of the selection of said lands, and shall be paid for by warrants drawn by the Secretary of the Interior upon the Treasurer of the United States. Until otherwise provided by the Secretary of the Interior may, under rules prescribed for that purpose, regulate and control the use of the water in said springs and creeks and the temporary use and occupation of the lands so ceded. No person shall occupy any portion of the lands so ceded, or carry on any business thereon except as provided in said rules, and until otherwise provided by Congress the laws of the United States relating to the introduction, possession, sale, and giving away of liquors or intoxicants of any kind within the Indian Territory or Indian reservations shall be applicable to the lands so ceded, and said lands shall remain within the jurisdiction of the United States court for the southern district of Indian Territory: **Provided, however,** That nothing contained in this section shall be construed or held to commit the Government of the United States to any expenditure of money upon said lands or the improvements thereon, except as provided herein, it being the intention of this provision that in the future the lands and improvements herein mentioned shall be conveyed by the United States to such territorial or State organization as may exist at the time such conveyance is made.

§ 575. **Acceptance of Patents by Minors and Intoxicated.**—65. The acceptance of patents for minors, prisoners, convicts, and incompetents by persons authorized to

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lotments for them shall be sufficient to bind such prisoners, convicts, and incompetents as to the conveyance of all other lands of the tribes.

Patents to Be Recorded.—66. All patents to allotment of land, when executed, shall be recorded in the office of the Commission to the Five Civilized Tribes within said territory in books appropriate for the purpose, until such time as Congress shall make other suitable provision for the recording of land titles as provided in the Atoka agreement, at the expense to the grantee; and such records shall have the same force and effect as other public records.

Section 3 of Curtis Act Repealed.—67. The provisions of section three of the Act of Congress approved March twenty-eighth, eighteen hundred and ninety-eight (30 Stat. 505), shall not apply to or in any manner affect the land or other property of the Choctaws and Chickasaws and their freedmen.

Supplemental Agreement Supersedes Curtis Act and Atoka Agreement.—68. No Act of Congress or treaty, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw nations.

Allotment Controversies.—69. All controversies between members as to their right to select particular parcels of land shall be determined by the Commission to the Five Civilized Tribes.

Selection of Allotments for Minors, Etc.—70. Allotments may be selected and homesteads designated for minors by the father or mother, if members, or by guardian, or, or the administrator having charge of their estates in the order named; and for prisoners, convicts, aged persons by duly appointed agents under power

of attorney; and for incompetents by guardians, curators, or other suitable person akin to them; but it shall be the duty of said Commission to see that said selections are made for the best interests of said parties.

§ 581. **No Contest After Nine Months.**—71. After the expiration of nine months after the date of the original selection of an allotment, by or for any citizen or freedman of the Choctaw or Chickasaw tribes, as provided in this agreement, no contest shall be instituted against such selection.

§ 582. **Per Capita Payment.**—72. There shall be paid to each citizen of the Chickasaw Nation, immediately after the approval of his enrollment and right to participate in distribution of tribal property, as herein provided, the sum of forty dollars. Such payment shall be made under the direction of the Secretary of the Interior, and out of the balance of the "arrears of interest" of five hundred and fifty-eight thousand five hundred and twenty dollars and fifty-four cents appropriated by the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An act for the protection of the people of the Indian Territory, and for other purposes," yet due to the Chickasaws and remaining to their credit in the Treasury of the United States; and so much of such moneys as may be necessary for such payment are hereby appropriated and made available for that purpose, and the balance, if any, there be shall remain in the Treasury of the United States, and be distributed per capita with the other funds of the tribes. And all acts of Congress or other treaty provisions in conflict with this provision are hereby repealed.

§ 583. **Agreement Binding When Ratified.**—73. This agreement shall be binding upon the United States and upon the Choctaw and Chickasaw nations and all Choctaws and Chickasaws, when ratified by Congress and by a

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erty of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be held upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of the said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which said election is held shall be deemed to be the date of final ratification.

§ 584. Canvass of Votes.—74. The votes cast in both the Choctaw and Chickasaw nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and the national secretary of the Choctaw Nation and the governor and national secretary of the Chickasaw Nation and two members of the Commission to the Five Civilized Tribes; and said board shall meet without delay at Atoka, Indian Territory, and canvass and count said votes, and make proclamation of the result.

In witness whereof the said commissioners do hereby set their names at Washington, District of Columbia, this twenty-first day of March, 1902.

Approved, July 1, 1902.

CHAPTER XLV.

ORIGINAL CREEK ALLOTMENT AGREEMENT

Chap. 676.—An Act to ratify and confirm an agree with the Muscogee or Creek tribe of Indians, for other purposes. Approved March 3, 1901; fied May 25, 1901. (31 Stat. 861.)

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ORIGINAL CREEK ALLOTMENT AGREEMENT.

§ 585

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32. **Tribal Government to Expire March 4, 1906.**
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585. Preamble.—That the agreement negotiated between the Commission to the Five Civilized Tribes and the Cherokee or Creek tribe of Indians at the city of Washington on the eighth day of March, nineteen hundred, as amended, is hereby accepted, ratified, and confirmed. The same shall be of full force and effect when ratified by the Creek national council. The principal chief, as soon as practicable after the ratification of this agreement by the Creek national council, shall call an extra session of the Creek national

council and lay before it this agreement and the Act of Congress ratifying it, and if the agreement be ratified by said council, as provided in the constitution of said nation, he shall transmit to the President of the United States the act of council, ratifying the agreement, and the President of the United States shall thereupon issue his proclamation declaring the same duly ratified, and that all the provisions of this agreement have become law according to the terms thereof: **Provided**, That such ratification by the Creek national council shall be made within ninety days from the approval of this Act by the President of the United States.

§ 586. **Parties to Agreement.**—This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon and Thomas B. Needles, duly appointed and authorized thereunto, and the Muskogee (or Creek) tribe of Indians, in Indian Territory, entered into on behalf of said tribe by Pleasant Porter, principal chief, and George A. Alexander, David M. Hodge, Isparlecher, Albert P. McKellop, and Cub McIntosh, delegates, duly appointed and authorized thereunto.

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

§ 587. **Definitions.**—1. The words "Creek" and "Muskogee," as used in this agreement, shall be deemed synonymous, and the words "Creek Nation" and "tribe" shall each be deemed to refer to the Muskogee Nation or Muskogee tribe of Indians in Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of the Muskogee Nation. The word "citizen" or "citizens" shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The words "The Dawes Commission" or "commission" shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

588. **Allottable Land to Be Appraised.**—2. All lands belonging to the Creek tribe of Indians in the Indian Territory, except town sites and lands herein reserved for school lands, shall be appraised at their true value, excluding only lawful improvements on lands in actual cultivation. The appraisement shall be made under direction of the Dawes Commission by such number of committees, with necessary assistance, as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said commission. Each committee shall make report of its work to said commission, which shall from time to time receive reports of same, in duplicate, and transmit them to the Secretary of the Interior for his approval, and when received one copy thereof shall be returned to the office of said commission for its use in making allotments as herein provided.

589. **Standard Allotment.**—3. All lands of said tribe except as herein provided, shall be allotted among the members of the tribe by said commission so as to give each an equal share of the whole in value, as nearly as may be, in the manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which belong to him.

One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values; and any allottee receiving lands of less than such standard value may, at any time, select other lands, which, at their appraised value, are sufficient to make the allotment equal in value to the standard so fixed.

590. **Allotment in Excess of Standard Value.**—Any citizen select lands the appraised value of which,

for any reason, is in excess of such standard value, the excess of value shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and money equal in value to his allotment. If any citizen select lands the appraised value of which is in excess of such standard value, he may pay the overplus in money, but if he fail to do so, the same shall be charged against him in the future distribution of the funds of the tribe arising from all sources whatsoever, and he shall not receive any further distribution of property or funds until all other citizens shall have received lands and funds equal in value to his allotment; and if there be not sufficient funds of the tribe to make the allotments of all other citizens of the tribe equal in value to his, then the surplus shall be a lien upon the rents and profits of his allotment until paid.

§ 591. **Selection for Minors, Etc.**—4. Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said commission to see that such selections are made for the best interests of such parties.

§ 592. **Excessive Holdings.**—5. If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, select therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such

cess he may dispose of the same to any other citizen, who may thereupon select lands to as to include such improvements; but, after the expiration of ninety days from the ratification of this agreement, any citizen may take any lands not already selected by another; but if lands so taken are in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: **Provided**, That the owner of improvements may remove the same if he desires.

§ 593. Allotments Under Curtis Act Confirmed.—6. All allotments made to Creek citizens by said commission prior to the ratification of this agreement, as to which there is no contest, and which do not include public property, and are not herein otherwise affected, are confirmed, and the same shall, as to appraisement and all things else, be governed by the provisions of this agreement; and said commission shall continue the work of allotment of Creek lands to citizens of the tribe as heretofore, conforming to provisions herein; and all controversies arising between citizens as to their right to select certain tracts of land shall be determined by said commission.

§ 594. Restrictions—Exemption.—7. Lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor and such lands shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.

§ 595. Homestead—Restrictions.—Each citizen shall select from his allotment forty acres of land as a homestead,

which shall be nontaxable and inalienable and free of any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: **Provided**, That selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, cannot select for themselves, may be made in the manner herein provided for the selection of their allotments; and for any reason, such selection be not made for any citizen it shall be the duty of said commission to make selection for him.

§ 596. **Homestead for Use of Heirs Born Subsequent to Ratification.**—The homestead of each citizen shall remain after the death of the allottee, for the use and support of his children born to him after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will, free from limitation, herein imposed; and if this be not done, the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation.

§ 597. **Allottee to Be Put in Possession.**—8. The Secretary of the Interior shall, through the United States Agent in said Territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land, and remove therefrom all persons objectionable to him; when any citizen shall thereafter make selection of his allotment as herein provided, and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land.

§ 598. **Residue of Tribal Lands for Equalizing Allotments.**—9. When allotment of one hundred and sixty acres has been made to each citizen, the residue of lands herein reserved or otherwise disposed of, and all the proceeds arising under this agreement shall be used for the purchase

equalizing allotments, and if the same be insufficient therefor, the deficiency shall be supplied out of any other lands of the tribe, so that the allotments of all citizens shall be made equal in value, as nearly as may be, in manner herein provided.

599. Townsites.—10. All towns in the Creek Nation having a present population of two hundred or more, shall, like all others may, be surveyed, laid out, and appraised under the provisions of an Act of Congress entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty obligations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes," approved May thirty-first, nineteen hundred, which said provisions are as follows:

That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and blocks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations, as may at that time have a population of two hundred or more in such manner as will best subserve the then present needs and reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare copies of the plat of each town site which, when the same is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commissioner to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

“Hereafter the work of the respective town-site commissions provided for in the agreement with the Choctaw Chickasaw tribes ratified in section twenty-nine of the Act of June twenty-eighth, eighteen hundred and ninety-eight, entitled ‘An Act for the protection of the people of Indian Territory, and for other purposes,’ shall begin. No town site immediately upon the approval of the same by the Secretary of the Interior and not before.

§ 600. **Townsite Commissioners.**—“The Secretary of the Interior may in his discretion appoint a town-site commission consisting of three members for each of the Creek Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots of the nation for which it is appointed, acting in conformity with the provisions of any then existing Act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination of the same, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

§ 601. **Commission for Each Town.**—“Where in the judgment the public interests will be thereby subserved the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to such town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that Nation. No such local commission shall be appointed in the manner provided in the Act approved June twenty-eight, eighteen hundred and ninety-eight, entitled ‘An Act for the protection of the people of the Indian Territory.’

The Secretary of the Interior, where in his judgment public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at expense of the town, to survey, lay out, and plat the same thereof, subject to his supervision and approval, as in other instances.

§ 602. **Appraisement of Lots.**—"As soon as the plat of any town site is approved, the proper commission shall, with reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make an appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing Act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause thereon shall expressly direct otherwise.

The Secretary of the Interior may, for good cause, remove any member of any townsite commission, tribal or otherwise, in any of said nations, and may fill the vacancy there-made or any vacancy otherwise occurring in like manner as the place was originally filled.

603. **Townsites and Corporate Limits Not Identical.**—shall not be required that the townsite limits established in the course of the platting and disposing of town and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such townsite limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: **Provided**



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further, That the exterior limits of all townsites designated and fixed at the earliest practicable time, under the rules and regulations prescribed by the Secretary of the Interior.

§ 604. **Townsite or Railway Line.**—“Upon the recommendation of the Commission to the Five Civilized Tribes, the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from any lands in the Choctaw, Chickasaw, Creek or Seminole nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction through either of said nations prior to the allotment of lands therein, and this irrespective of the population of such townsite at the time. Such townsites shall be surveyed, laid out, and platted, and the lands therein dedicated for the benefit of the tribe in the manner hereinafter prescribed for other townsites: **Provided further,** That whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe, such member shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: **Provided,** That hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a townsite commissioner for any town or to fill a vacancy caused by the neglect or refusal of the townsite commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion appoint a commission to fill the vacancy thus created

§ 605. **Prior Rights to Purchase Lots.**—11. Any person in rightful possession of any town lot having improvements thereon, other than temporary buildings, and tillage, shall have the right to purchase such lot



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3 one-half of the appraised value thereof, but if he shall fail within sixty days to purchase such lot and make the first payment thereon, as herein provided, the lot and improvements shall be sold at public auction to the highest bidder, under direction of the appraisement commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

§ 606. Option to Purchase At One-Half Appraised Value.

—12. Any person having the right of occupancy of a residence or business lot or both in any town, whether improved or not, and owning no other lot or land therein, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

§ 607. Home At One-half Appraised Value.—13. Any person holding lands within a town occupied by him as a home, also any person who had at the time of signing this agreement purchased any lot, tract, or parcel of land from any person in legal possession at the time, shall have the right to purchase the lot embraced in same by paying one-half of the appraised value thereof, not, however, exceeding four acres.

§ 608. Unimproved Lots.—14. All town lots not having thereon improvements, other than temporary buildings, fencing and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after their appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder at not less than their appraised value.

§ 609. Right of Occupancy.—Any person having the right of occupancy of lands in any town which has been or may be laid out into town lots, to be sold at public auction



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as above, shall have the right to purchase one-fourth the lots into which such lands may have been divided two-thirds of their appraised value.

§ 610. Terms of Payment.—15. When the appraisal of any town lot is made, upon which any person has made improvements as aforesaid, said appraiser shall notify him of the amount of said appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, as herein provided, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money in three equal annual installments, without interest.

Any person who may purchase an unimproved lot shall proceed to make payment for same in such time and manner as herein provided for the payment of sums due on improved lots, and if in any case any amount be not paid when due, it shall thereafter bear interest at the rate of ten per centum per annum until paid. The purchaser in any case at any time make full payment for any lot.

§ 611. Lots Purchased By Citizens Exempt.—16. Town lots purchased by citizens in accordance with the provisions of this agreement shall be free from incumbrance by any debt contracted prior to date of his purchase therefor, except for improvements thereon.

§ 612. Unsold Lots Not Taxable.—17. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against a town lot sold as herein provided, and the same shall constitute a lien upon the interest of the purchaser thereof after any payment thereon has been made by him, and the forfeiture of any lot be made all taxes assessed against the lot shall be paid out of any money paid thereon by the purchaser.

§ 613. **Cemeteries.**—18. The surveyors may select and create a cemetery within suitable distance from each town, embrace such number of acres as may be deemed necessary for such purpose, and the appraisement commission shall appraise the same at not less than twenty dollars per acre, and the town may purchase the land by paying the appraised value thereof; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property.

§ 614. **Sites for Court Houses, Etc.**—19. The United States may purchase, in any town in the Creek Nation, suitable land for court houses, jails, and other necessary public buildings for its use, by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected; and if any person have improvements thereon, other than temporary buildings, fencing and tillage, the same shall be appraised and paid for by the United States.

§ 615. **Henry Kendall College—Nazareth Institute.**—20. Henry Kendall College, Nazareth Institute, and Spaulding Institute, in Muskogee, may purchase the parcels of land occupied by them, or which may have been laid out for their use and so designated upon the plat of said town, at one-half of their appraised value, upon conditions herein provided; and all other schools and institutions of learning created in incorporated towns in the Creek Nation may, in the same manner, purchase the lots or parcels of land occupied by them.

§ 616. **Churches, Parsonages, Etc.**—21. All town lots or parts of lots, not exceeding fifty by one hundred and

fifty feet in size, upon which church houses and parsonage have been erected, and which are occupied as such at the time of appraisement, shall be properly conveyed to the churches to which such improvements belong gratuitously and if such churches have other adjoining lots inclosed actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

§ 617. **Certain Towns Authorized to Be Platted.**—22. The towns of Clarksville, Coweta, Gibson Station and Mounds may be surveyed and laid out in town lots and necessary streets and alleys, and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding one hundred and sixty acres for either, and in manner not to include or interfere with the allotment of any citizen selected prior to the date of this agreement, which survey may be made in manner provided for other towns; and the appraisement of the town lots of said towns may be made by any committee appointed for either of the other towns hereinbefore named, and the lots in said towns may be disposed of in like manner and on the same conditions and terms as those of other towns. All of such work may be done under the direction of and subject to the approval of the Secretary of the Interior.

§ 618. **Allotment Patents.**—23. Immediately after the ratification of this agreement by Congress and the tribe the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances here provided for, and the principal chief shall thereupon proceed to execute in due form and deliver to each citizen who has selected or may hereafter select his allotment, which is not contested, a deed conveying to him all right, title and interest of the Creek Nation and of all other citizens in and to the lands embraced in his allotment certificate, and such other lands as may have been selected by him for equalization of his allotment.

619. Deeds to Other Than Allotments.—The principal of shall, in like manner and with like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands or town lots to be conveyed to any one person shall, so far as practicable, be included in one deed, and all deeds shall be executed free of charge.

§ 620. All Conveyances to Be Approved.—All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all right, title, and interest of the United States in and to the lands embraced in his deed.

621. Acceptance of Patent—Effect of.—Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all the lands of the tribe, as provided herein, and as a relinquishment of all his right, title and interest in and to the same, except in the proceeds of lands reserved from allotment.

The acceptance of deeds of minors and incompetents, by persons authorized to select their allotments for them, shall be deemed sufficient to bind such minors and incompetents to the allotment and conveyance of all other lands of the tribe, as provided herein.

The transfer of the title of the Creek tribe to individual allottees and to other persons, as provided in this agreement, shall not inure to the benefit of any railroad company, nor vested in any railroad company, any right, title, and interest in or to any of the lands in the Creek Nation.

622. Deeds to Be Recorded.—All deeds when so executed and approved shall be filed in the office of the Dawes Commission, and there recorded without expense to the allottee, and such records shall have like effect as other public records.

§ 623. **Reservations.**—24. The following lands shall reserved from the general allotment herein provided fo

(a) All lands herein set apart for town sites.

(b) All lands to which, at the date of the ratification this agreement, any railroad company may, under a treaty or act of Congress, have a vested right for right way, depots, station grounds, water stations, stock yard or similar uses connected with the maintenance and operation of the railroad.

(c) Forty acres for the Eufaula High School.

(d) Forty acres for the Wealaka Boarding School.

(e) Forty acres for the Newyaka Boarding School.

(f) Forty acres for the Wetumka Boarding School.

(g) Forty acres for the Euchee Boarding School.

(h) Forty acres for the Coweta Boarding School.

(i) Forty acres for the Creek Orphan Home.

(j) Forty acres for the Tallahassee Colored Boarding School.

(k) Forty acres for the Pecan Creek Colored Boarding School.

(l) Forty acres for the Colored Creek Orphan Home.

(m) All lands selected for town cemeteries, as herein provided.

(n) The lands occupied by the university established by the American Baptist Home Mission Society, and located near the town of Muskogee, to the amount of forty acres which shall be appraised, excluding improvements thereon, and said university shall have the right to purchase the same by paying one-half the appraised value thereof, on the terms and conditions herein provided. All improvements made by said university on lands in excess of said forty

res shall be appraised and the value thereof paid to it the person to whom such lands may be allotted.

(o) One acre each for the six established Creek court-uses with the improvements thereon.

(p) One acre each for all churches and schools outside towns now regularly used as such.

All reservations under the provisions of this agreement, except as otherwise provided herein, when not needed for the purposes for which they are at present used, shall be sold at public auction to the highest bidder, to citizens only, under directions of the Secretary of the Interior.

§ 624. **Municipal Corporations.**—25. Authority is hereby conferred upon municipal corporations in the Creek Nation, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes, and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of the laws of the United States in force in the organized Territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and all provisions of law are hereby put in force in said nation and made applicable to the cities and towns therein the same as if specially enacted in reference thereto.

§ 625. **Claims Against the United States.**—26. All claims of whatsoever nature, including the "Loyal Creek claim" under Article Four of the treaty of eighteen hundred and sixty-six, and the "Self-emigration claim" under Article Twelve of the treaty of eighteen hundred and thirty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this

§ 632. **Deferred Payments.**—30. All deferred payments under provisions of this agreement, shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if, at the expiration of two years from date of payment of the fifteen per centum aforesaid, default in any annual payment has been made, the lien for the payment of all purchase money remaining unpaid may be enforced in the United States court within the jurisdiction of which the town is located in the same manner as vendic-
liens are enforced; such suit being brought in the name of the principal chief, for the benefit of the tribe.

§ 633. **Moneys of Tribe.**—31. All moneys to be paid to the tribe under any of the provisions of this agreement shall be paid, under direction of the Secretary of the Interior into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made monthly to the Secretary of the Interior and to the principal chief.

§ 634. **Moneys—How Paid Out.**—32. All funds of the tribe, and all moneys accruing under the provisions of this agreement, when needed for the purposes of equal allotments or for any other purposes herein prescribed, shall be paid out under the direction of the Secretary of the Interior; and when required for per capita payments, if such shall be paid out directly to each individual by a bona fide officer of the United States, under direction of the Secretary of the Interior, without unnecessary delay.

§ 635. **Moneys Paid Out Only Upon Consent of Tribe.**—33. No funds belonging to said tribe shall hereafter be used or paid out for any purposes by any officer of the United States without consent of the tribe, expressly given through its national council, except as herein provided.

§ 636. **United States to Pay Expense of Platting Lands.**—34. The United States shall pay all expenses

sent to the survey, platting, and disposition of town lots, and of allotment of lands made under the provisions of this agreement, except where the town authorities have been may be duly authorized to survey and plat their respective towns at the expense of such town.

§ 637. **Parents Natural Guardians.**—35. Parents shall be the natural guardians of their children, and shall act for them as such unless a guardian shall have been appointed by a court having jurisdiction; and parents so acting shall not be required to give bond as guardians unless by order of such court, but they, and all other persons having charge of lands, moneys, and other property belonging to minors and incompetents, shall be required to make proper accounting therefor in the court having jurisdiction thereof in manner deemed necessary for the preservation of such estates.

§ 638. **Seminole Citizens in Creek Nation.**—36. All Seminole citizens who have heretofore settled and made homes upon lands belonging to the Creeks may there take, for themselves and their families, such allotments as they would be entitled to take of Seminole lands, and all Creek citizens who have heretofore settled and made homes upon lands belonging to Seminoles may there take, for themselves and their families, allotments of one hundred and sixty acres each, and if the citizens of one tribe thus receive a greater number of acres than the citizens of the other, the excess shall be paid for by such tribe, at a price to be agreed upon by the principal chiefs of the two tribes, and if they fail to agree, the price shall be fixed by the Indian agent, but the citizenship of persons so taking allotments shall in no wise be affected thereby.

Titles shall be conveyed to Seminoles selecting allotments of Creek lands in manner herein provided for conveyance of Creek allotments, and titles shall be conveyed to Creeks selecting allotments of Seminole lands in manner

provided in the Seminole agreement, dated December tenth, eighteen hundred and ninety-seven, for conveyance of Seminole allotments: **Provided**, That deeds shall be executed to allottees immediately after selection of an allotment is made.

This provision shall not take effect until after it shall have been separately and specifically approved by the Creek national council and by the Seminole general council; and if not approved by either it shall fail altogether and be eliminated from this agreement without impairing any other of its provisions.

§ 639. **Agricultural Leases.**—37. Creek citizens renting their allotments, when selected, for a term not exceeding one year, and after receiving title thereto without restriction, if adjoining allottees are not injured thereon and cattle grazed thereon shall not be liable to any tax; but when cattle are introduced into the Creek Nation and grazed on lands not selected by citizens, the Secretary of the Interior is authorized to collect from the owner thereof a reasonable grazing tax for the benefit of the tribe; and section twenty-one hundred and seventeen of the Revised Statutes of the United States, shall not hereafter apply to Creek lands.

§ 640. **Timber.**—38. After any citizen has selected an allotment he may dispose of any timber thereon, but shall not dispose of such timber, or any part of same, he shall thereafter select other lands in lieu thereof, and his selection shall be appraised as if in condition when selected.

No timber shall be taken from lands not so selected or disposed of, without payment of reasonable royalty thereon, under contract to be prescribed by the Secretary of the Interior.

§ 641. **Non-citizen Not Required to Pay Permit** 39. No non-citizen renting lands from a citizen for

tural purposes, as provided by law, whether such lands
e been selected as an allotment or not, shall be required
pay any permit tax.

642. **Creek Schools.**—40. The Creek school fund shall
used, under direction of the Secretary of the Interior,
the education of Creek citizens, and the Creek schools
l be conducted under rules and regulations prescribed
him, under direct supervision of the Creek school super-
ndent and a supervisor appointed by the Secretary, and
er Creek laws, subject to such modifications as the Sec-
ry of the Interior may deem necessary to make the
ols most effective and to produce the best possible re-

l teachers shall be examined by or under direction of
superintendent and supervisor, and competent teach-
nd other persons to be engaged in and about the schools
good moral character only shall be employed, but
e all qualifications are equal preference shall be given
izens in such employment.

l moneys for running the schools shall be appropriated
e Creek national council, not exceeding the amount of
Creek school fund, seventy-six thousand four hundred
sixty-eight dollars and forty cents; but if it fail or re-
to make the necessary appropriations the Secretary of
nterior may direct the use of a sufficient amount of the
l funds to pay all expenses necessary to the efficient
act of the schools, strict account thereof to be rendered
n and to the principal chief.

accounts for expenditures in running the schools shall
xamined and approved by said superintendent and
visor, and also by the general superintendent of In-
schools, in Indian Territory, before payment thereof is

the superintendent and supervisor fail to agree upon
matter under their direction or control, it shall be de-

cided by said general superintendent, subject to appeal to the Secretary of the Interior, but his decision shall go into effect until reversed by the Secretary.

§ 643. **Inconsistent Provisions of Acts of Congress to Apply.**—41. The provisions of section thirteen of Act of Congress approved June twenty-eighth, eight hundred and ninety-eight, entitled "An Act for the protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, or be in force in the Creek Nation, and no Act of Congress or treaty provision inconsistent with this agreement shall be in force in the nation, except section fourteen of said last-mentioned Act, which shall continue in force as if this agreement had been made.

§ 644. **Acts of Creek Council to Be Submitted to President.**—42. No act, ordinance, or resolution of the national council of the Creek Nation in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Creek government as here limited, shall be of any validity until approved by the President of the United States. When any such act, ordinance, or resolution shall be passed by said council and approved by the principal chief, a true and correct copy thereof, duly certified, shall be immediately transmitted to the President, who shall, within thirty days after receiving him, approve or disapprove the same. If disapproved, it shall be so indorsed and returned to the principal chief. If approved, the approval shall be indorsed thereon, and it shall be published in at least two newspapers having bona fide circulation in the Creek Nation.

§ 645. **Intoxicating Liquors.**—43. The United S

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ees to maintain strict laws in said nation against the
roduction, sale, barter, or giving away of liquors or in-
cants of any kind whatsoever.

§ 646. **Existing Liquor Treaties in Effect Except Where
onsistent.**—44. This agreement shall in no wise affect
provisions of existing treaties between the United States
l said tribe except so far as inconsistent therewith.

§ 647. **General Powers Upon Secretary.**—45. All things
ecessary to carrying into effect the provisions of this agree-
nt, not otherwise herein specifically provided for, shall
done under authority and directions of the Secretary of
Interior.

§ 648. **Tribal Government to Expire March 4, 1906.**—
The tribal government of the Creek Nation shall not
ntinue longer than March fourth, nineteen hundred and
; subject to such further legislation as Congress may
m proper.

649. **Creek Courts Not Revived.**—47. Nothing con-
ed in this agreement shall be construed to revive or re-
blish the Creek courts which have been abolished by
er Acts of Congress.

proved, March 1, 1901.

CHAPTER XLVI.

SUPPLEMENTAL CREEK AGREEMENT.

Chap. 1323.—An Act to ratify and confirm a supplemental agreement with the Creek tribe of Indians, and other purposes. Approved June 30, 1902; ratified July 26, 1902; effective August 8, 1902. (32 S. 500.)

- § 650. Preamble.
- 651. Parties to Agreement.
- 652. Definition of Term.
- 653. Section 2 of Original Agreement Amended.
- 654. \$6.50 Maximum Appraisalment.
- 655. Appraisalment, by Whom Made.
- 656. Paragraph 2 of Section 3 of Original Agreement Amended.
- 657. Jurisdiction of Secretary Over Allotment Controversies.
- 658. Lands Selected by Mistake.
- 659. Arkansas Law of Descent Substituted for Creek Law Provisions.
- 660. Enrollment of Children—Death Before Selection.
- 661. Children Not Listed—Death Before Selection.
- 662. Supplemental Roll.
- 663. Roads.
- 664. Townsites.
- 665. Cemeteries.
- 666. Cemeteries—Continued
- 667. Per Capita Payments.
- 668. Certain Provisions for Reservations Repealed.
- 669. Restrictions Upon Alienation—Homestead.
- 670. Selections for Minors, etc.
- 671. Homestead for Use of Children Born After May 25, 1902.
- 672. Leases.
- 673. Cattle Grazing Regulated.
- 674. Allottee to be Put in Possession.
- 675. All Inconsistent Laws Repealed.
- 676. Agreement Binding When Ratified.
- 677. Ratification by Creek Council.

§ 650. **Preamble.**—That the following supplemental agreement, submitted by certain commissioners of the C

be of Indians, as herein amended, is hereby ratified and affirmed on the part of the United States, and the same shall be of full force and effect if ratified by the Creek tribal council on or before the first day of September, nineteen hundred and two, which said supplemental agreement is as follows:

§ 651. Parties to Agreement.—This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, James Bixby, Thomas B. Needles, and Clifton R. Breckinridge, duly appointed and authorized thereunto, and the Muskogee (or Creek) Tribe of Indians, in Indian Territory, entered into in behalf of the said tribe by Pleasant Porter, principal chief, Roley McIntosh, Thomas W. Perryman, James McIntosh, and David M. Hodge, commissioners duly appointed and authorized thereunto, witnesseth, that in consideration of the mutual undertakings herein contained it is agreed as follows:

§ 652. Definition of Terms.—The words "Creek" and "Muskogee" as used in this agreement shall be deemed synonymous, and the words "Nation" and "tribe" shall each be deemed to refer to the Muskogee Nation or Muskogee Tribe of Indians in Indian Territory. The words "principal chief" shall be deemed to refer to the principal chief of the Muskogee Nation. The word "citizen" or "citizens" shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The word "Commissioner" shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

653. Section 2 of Original Agreement Amended.—2. Section 2 of the agreement ratified by Act of Congress approved March, 1901 (31 Stat. L., 861), is amended and as so amended is re-enacted to read as follows:

§ 654. **\$6.50 Maximum Appraisement.**—All lands belonging to the Creek tribe of Indians in Indian Territory except town sites and lands reserved for Creek schools, churches, railroads, and town cemeteries, in accordance with the provisions of the Act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be appraised at not to exceed \$6.50 per acre, excluding only lawful improvements on lands in actual cultivation.

§ 655. **Appraisement, by Whom Made.**—Such appraisement shall be made, under the direction and supervision of the Commission to the Five Civilized Tribes, by such number of committees with necessary assistance as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief. The Commission shall have authority to revise and adjust the work of said committees; and if the members of any committee fail to agree as to the value of any tract of land, the value thereof shall be fixed by said Commission. The appraisement so made shall be submitted to the Secretary of the Interior for approval.

§ 656. **Paragraph 2 of Section 3 of Original Agreement Amended.**—3. Paragraph 2 of section 3 of the agreement ratified by said Act of Congress approved March 1, 1901, is amended and as so amended is re-enacted to read as follows:

If any citizen select lands the appraised value of which is \$6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

§ 657. **Jurisdiction of Secretary Over Allotment Controversies.**—4. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to

mine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

§ 658. **Lands Selected by Mistake.**—5. Where it is shown to the satisfaction of said Commission that it was the intention of a citizen to select lands which include his home and improvements, but that through error and mistake he had selected land which did not include said home and improvements, said Commission is authorized to cancel said selection and the certificate of selection or allotment embracing said lands, and permit said citizen to make a new selection including said home and improvements; and should said land including said home and improvements have been selected by any other citizen of said nation, the citizen owning said home and improvements shall be permitted to file, within ninety days from the ratification of this agreement, a contest against the citizen having previously selected the same and shall not be prejudiced therein by reason of lapse of time or any provision of law or rules and regulations to the contrary.

§ 659. **Arkansas Law of Descent Substituted for Creek Law—Provisos.**—6. The provisions of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and moneys provided for by said Act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: **Provided**, That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: **And provided further**, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said chapter 49.

§ 660. **Enrollment of Children—Death Before Selection.**—7. All children born to those citizens who are entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), subsequent to July 1, 1900 and up to and including May 25, 1901, and living upon that latter date, shall be placed upon the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of land and distributive share of the funds of the tribe, the land and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

§ 661. **Children Not Listed—Death Before Selection.**—8. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrollment as provided by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

§ 662. **Supplemental Roll.**—9. If the rolls of citizenship provided for by the Act of Congress approved March 1, 1901 (31 Stat. L. 861), shall have been completed by said commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provisions of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll when approved by the Secretary of the Interior shall in all respects be held to be a part of the rolls of citizenship of said tribe: **Provided, That the Daw**

Commission be, and is hereby, authorized to add the following persons to the Creek roll: Nar-wal-le-pe-se, Mary Washington, Walter Washington and Willie Washington, who are Creek Indians, but whose names were left off the roll through neglect on their part.

§ 663. **Roads.**—10. Public highways or roads three rods in width, being one and one-half rods on each side of the section line, may be established along all section lines without any compensation being paid therefor; and all allottees, purchasers, and others shall take the title to such lands subject to this provision. And public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues; and to be paid by the Creek Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid in the same manner.

§ 664. **Townsites.**—11. In all instances of the establishment of town sites in accordance with the provisions of the Act of Congress approved May 31, 1900 (31 Stat. L. 231), or those of section 10 of the agreement ratified by Act of Congress approved March 1, 1901 (31 Stat. L. 861), authorizing the Secretary of the Interior, upon the recommendation of the Commission to the Five Civilized Tribes, at any time before allotment, to set aside and reserve from allotment any lands in the Creek Nation not exceeding 160 acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed, or be in process of construction, in or through said nation prior to the allot-

ment of lands therein, any citizen who shall have previously selected such town site, or any portion thereof, for his allotment, or who shall have been by reason of improvement therein entitled to select the same for his allotment, shall be paid by the Creek Nation the full value of his improvements thereon at the time of the establishment of the town site, under rules and regulations to be prescribed by the Secretary of the Interior: **Provided, however,** That citizens may purchase any of said lands in accordance with the provisions of the Act of March 1, 1901 (31 Stat. L. 1033). **And provided further,** That the lands which may hereafter be set aside and reserved for town sites upon recommendation of the Dawes Commission as herein provided shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of town sites, and not to exceed 640 acres for each town site, and 10 per cent of the net proceeds arising from the sale of that portion of the land within the town site so selected by him, or which he was so entitled to select; and he shall be in addition to his right to receive from other lands an allotment of 160 acres.

§ 665. **Cemeteries.**—12. A cemetery other than a cemetery included within the boundaries of an allotment shall not be desecrated by tillage or otherwise, but no interment shall be made therein except with the consent of the allottee, and any person desecrating by tillage or otherwise a grave or graves in a cemetery included within the boundaries of an allotment shall be guilty of a misdemeanor, and upon conviction be punished as provided in section 567 of Mansfield's Digest of the Statutes of Texas.

§ 666. **Cemeteries Continued.**—13. Whenever the site surveyors of any town in the Creek Nation shall have selected and located a cemetery, as provided in section 567 of the Act of Congress approved March 1, 1901 (31 Stat. L. 1033).

661), the town authorities shall not be authorized to dispose of lots in such cemetery until payment shall have been made to the Creek Nation for land used for said cemetery, as provided in said Act of Congress, and if the town authorities fail or refuse to make payment as aforesaid within one year of the approval of the plat of said cemetery by the Secretary of the Interior, the land so reserved shall revert to the Creek Nation and be subject to allotment. And for lands heretofore or hereafter designated as parks upon any plat or any town site the town shall make payment into the Treasury of the United States to the credit of the Creek Nation within one year at the rate of \$100 per acre, and if such payment be not made within that time the lands so designated as a park shall be platted into lots and sold as other town lots.

667. Per Capita Payments.—14. All funds of the Creek Nation not needed for equalization of allotments, including Creek school fund, shall be paid out under direction of the Secretary of the Interior per capita to the citizens of the Creek Nation on the dissolution of the Creek tribal government.

668. Certain Provisions for Reservations Repealed.—

The provisions of section 24 of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), for the reservation and for the six established Creek courthouses is hereby repealed.

669. Restrictions Upon Alienation—Homestead.—16. Lands allotted to citizens shall not in any manner whatsoever at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of

land, or a quarter of a quarter section, as a homestead which shall be and remain non-taxable, inalienable, and free from any incumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

§ 670. **Selections for Minors, Etc.**—Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who can not select for themselves may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him.

§ 671. **Homestead for Use of Children Born After May 25, 1901.**—The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will free from the limitation herein imposed, and if this be done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the law of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no act of estoppel shall ever prevent the assertion of its invalidity.

§ 672. **Leases.**—17. Section 37 of the agreement ratified by said act of March 1, 1901, is amended, and as amended is re-enacted to read as follows:

“Creek citizens may rent their allotments, for strictly non-mineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any obligation or obligation to renew the same. Such leases for

period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Creek Nation and grazed on lands not selected for allotment by citizens, the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section 2117 of the Revised Statutes of the United States shall not hereafter apply to Creek lands."

§ 673. **Cattle Grazing Regulated.**—18. When cattle are introduced into the Creek Nation to be grazed upon either lands not selected for allotment or upon lands allotted or selected for allotment the owner thereof, or the party or parties so introducing the same, shall first obtain a permit from the United States Indian Agent, Union Agency, authorizing the introduction of such cattle. The application for said permit shall state the number of cattle to be introduced, together with a description of the same, and shall specify the lands upon which said cattle are to be grazed, and whether or not said lands have been selected for allotment. Cattle so introduced and all other live stock owned or controlled by non-citizens of the nation shall be kept upon inclosed lands, and if any such cattle or other live stock trespass upon lands allotted to or selected for allotment by any citizen of said nation, the owner thereof shall, at the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass thereafter double damages to be recovered with costs, whether the land upon which trespass is made is inclosed or not.

Any person who shall introduce any cattle into the C Nation in violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine not less than \$100, and shall stand committed until such fine and costs are paid, such commitment not to exceed one day for every \$2 of said fine and costs; and every day cattle are permitted to remain in said nation without a permit for their introduction having been obtained shall constitute a separate offense.

§ 674. **Allottee to Be Put in Possession.**—19. Section 8 of the agreement ratified by said act of March 1, 1900 amended and as so amended is re-enacted to read as follows:

“The Secretary of the Interior shall, through the United States Indian agent in said Territory, immediately after ratification of this agreement, put each citizen who made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided and receive a certificate therefor, he shall be immediately thereupon so placed in possession of his land, and during the continuance of tribal government the Secretary of the Interior, through such Indian agent, shall protect the allottee in his right of possession against any and all persons claiming under lease, agreement, or conveyance not obtained in conformity to law.”

§ 675. **All Inconsistent Laws Repealed.**—20. This agreement is intended to modify and supplement the agreement ratified by said act of Congress approved March 1901, and shall be held to repeal any provision in that agreement or in any prior agreement, treaty, or law in conflict herewith.

§ 676. **Agreement Binding When Ratified.**—21. This agreement shall be binding upon the United States and

SUPPLEMENTAL CREEK AGREEMENT.

§ 677

Creek Nation, and upon all persons affected thereby when it shall have been ratified by Congress and the Creek National Council, and the fact of such ratification shall have been proclaimed as hereinafter provided.

§ 677. Ratification By Creek Council.—22. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek Nation council and submit this agreement, as ratified by Congress, to such council for its consideration, and if the agreement be ratified by the National council, as provided in the constitution of the tribe, the principal chief shall transmit to the President of the United States a certified copy of the act of the council ratifying the agreement, and thereupon the President shall issue his proclamation making public announcement of such ratification, thenceforward all the provisions of this agreement shall have the force and effect of law.

Approved, June 30, 1902.

CHAPTER XLVII.

ORIGINAL SEMINOLE AGREEMENT—WITH AMENDMENTS.

Chap. 542.—An Act to ratify the agreement between Dawes Commission and the Seminole Nation Indians. Ratified by tribe December 16, 1897; approved July 1, 1898. (30 Stat. 567.)

- § 678. Preamble.
- 679. Parties to Agreement.
- 680. Lands Graded.
- 681. Restrictions Upon Alienation.
- 682. Agricultural Leases.
- 683. Coal, Mineral, Coal Oil, Natural Gas.
- 684. Townsite of Wewoka.
- 685. Schools.
- 686. Reservations.
- 687. Patents—Homestead—Restrictions.
- 688. Per Capita Payments.
- 689. Loyal Seminole Claim.
- 690. Terms of United States Court.
- 691. Not to Affect Existing Treaties Except Where Inconsistent.
- 692. Jurisdiction of United States Courts.
- 693. Curtis Act as to General Council Repealed.
- 694. United States to Purchase Additional Lands.
- 695. Treaty Binding When Ratified.
- 696. Seminole Tribal Government Not to Continue After April 4, 1906.
- 697. Seminole Homestead—Restrictions.

§ 678. **Preamble.**—Whereas an agreement was made between Henry L. Dawes, Tams Bixby, Frank C. Armstrong, and S. McKennon, Thomas B. Needles, the Commissioners of the United States to the Five Civilized Tribes and L. Aylesworth, secretary, John F. Brown, Okchan, William Cully, K. N. Kinkehee, Thomas West, Factor, Seminole Commission; A. J. Brown, secret

ORIGINAL SEMINOLE AGREEMENT—WITH AMENDMENTS § 680

part of the Seminole Nation of Indians on December
enth, eighteen hundred and ninety-seven, as follows:

579. Parties to Agreement.—This agreement by and
een the Government of the United States of the first
entered into in its behalf by the Commission to the
Civilized Tribes, Henry L. Dawes, Tams Bixby, Frank
armstrong, Archibald S. McKennon, and Thomas B.
lles, duly appointed and authorized thereunto, and the
ernment of the Seminole Nation in Indian Territory, of
second part, entered into on behalf of said Government
ts Commission, duly appointed and authorized there-
, viz, John F. Brown, Okchan Harjo, William Cully, K.
inkehee, Thomas West, and Thomas Factor:
itnesseth, That in consideration of the mutual under-
igs herein contained, it is agreed as follows:

680. Lands Graded.—All lands belonging to the Sem-
tribe of Indians shall be divided into three classes,
gnated as first, second, and third class; the first class
e appraised at five dollars, the second class at two dol-
and fifty cents, and the third class at one dollar and
ty-five cents per acre, and the same shall be divided
ig the members of the tribe so that each shall have an
l share thereof in value, so far as may be, the location
fertility of the soil considered; giving to each the right
lect his allotment so as to include any improvements
on, owned by him at the time; and each allottee shall
the sole right of occupancy of the land so allotted to
during the existence of the present tribal government,
until the members of said tribe shall have become citi-
of the United States. Such allotments shall be made
r the direction and supervision of the Commission to
ive Civilized Tribes in connection with a representa-
ppointed by the tribal government; and the chairman
id Commission shall execute and deliver to each allot-
certificate describing therein the land allotted to him.

§ 681. **Restrictions Upon Alienation.**—All contract sale, disposition, or encumbrance of any part of any allotment made prior to date of patent shall be void.

§ 682. **Agricultural Leases.**—Any allottee may lease any tract of land for any period not exceeding six years, the lease therefor to be executed in triplicate upon blanks provided by the tribal government, and before the same shall become effective it shall be approved by the principal chief and a copy filed in the office of the clerk of the United States court at Wewoka.

§ 683. **Coal, Mineral, Coal Oil, Natural Gas.**—No lease of any coal, mineral, coal oil, or natural gas within the Nation shall be valid unless made with the tribal government, by and with the consent of the allottee and approved by the Secretary of the Interior.

Should there be discovered on any allotment any mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half shall be paid to the tribal treasury until extinguishment of tribal government, and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, upon extinguishment of tribal government, may be used for the same purpose, so that each allotment may be made equal in value as aforesaid.

§ 684. **Townsite of Wewoka.**—The townsite of Wewoka shall be controlled and disposed of according to the provisions of an act of the General Council of the Seminole Nation, approved April 23, 1897, relative thereto; and upon extinguishment of the tribal government, deeds of conveyance shall issue to owners of lots as herein provided for allottees; and all lots remaining unsold at that time may be sold in such manner as may be prescribed by the Secretary of the Interior.

ORIGINAL SEMINOLE AGREEMENT—WITH AMENDMENTS § 687

§ 685. **Schools.**—Five hundred thousand dollars (\$500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country.

§ 686. **Reservations.**—There shall also be excepted from allotment one-half acre for the use and occupancy of each of twenty-four churches, including those already existing and such others as may hereafter be established in the Seminole country, by and with consent of the General Council of the Nation; but should any part of same, at any time, cease to be used for church purposes, such part shall at once revert to the Seminole people and be added to the lands set apart for the use of said district schools.

One acre in each township shall be excepted from allotment and the same may be purchased by the United States upon which to establish schools for the education of children of non-citizens when deemed expedient.

§ 687. **Patents — Homestead — Restrictions.**—When the tribal government shall cease to exist the principal chief last elected by said tribe shall execute, under his hand and the seal of the Nation, and deliver to each allottee a deed conveying to him all the right, title, and interest of the said Nation and the members thereof in and to the lands so allotted to him, and the Secretary of the Interior shall approve such deed, and the same shall thereupon operate as

relinquishment of the right, title, and interest of the States in and to the land embraced in said conveyance and as a guarantee by the United States of the title lands to the allottee; and the acceptance of such conveyance by the allottee shall be a relinquishment of his title to the interest in all other lands belonging to the tribe, except as may have been excepted from allotment and reserved in common for other purposes. Each allottee shall receive one tract of forty acres, which shall, by the terms of the deed, be made inalienable and non-taxable as a homestead in perpetuity.

§ 688. **Per Capita Payments.**—All moneys belonging to the Seminoles remaining after equalizing the value of the allotments as herein provided and reserving said sum of one hundred thousand dollars for school fund shall be paid per capita to the members of said tribe in three equal payments, the first to be made as soon as convenient after the allotment and extinguishment of tribal government, and the others at one and two years respectively. Such payments shall be made by a person appointed by the Secretary of the Interior, who shall prescribe the amount of and approve the bond to be given by such person; and strict accountability shall be given to the Secretary of the Interior for such disbursements.

§ 689. **Loyal Seminole Claim.**—The loyal Seminole claims shall be submitted to the United States Senate, which shall make final determination of same, and, if sustained, shall provide for payment thereof within two years from the date hereof.

§ 690. **Terms of United States Court.**—There shall hereafter be held at the town of Wewoka, the present capital of the Seminole Nation, regular terms of the United States court as at other points in the judicial district in which the Seminole Nation is a part.

The United States agrees to maintain strict laws

ORIGINAL SEMINOLE AGREEMENT—WITH AMENDMENTS § 694

minole country against the introduction, sale, barter, or
ring away of intoxicants of any kind or quality.

§ 691. Not to Affect Existing Treaties Except Where consistent.—This agreement shall in no wise affect the
ovisions of existing treaties between the Seminole Nation
d the United States, except in so far as it is inconsistent
erewith.

§ 692. Jurisdiction of United States Court.—The United
ates courts now existing, or that may hereafter be
eated, in Indian Territory shall have exclusive jurisdic-
on of all controversies growing out of the title, owner-
ip, occupation, or use of real estate owned by the Sem-
oles, and to try all persons charged with homicide, em-
azement, bribery, and embracery hereafter committed in
a Seminole country, without reference to race or citizen-
ip of the persons charged with such crime; and any citi-
n or officer of said nation charged with any such crime, if
nvicted, shall be punished as if he were a citizen or officer
the United States, and the courts of said nation shall re-
in all the jurisdiction which they now have, except as
rein transferred to the courts of the United States.

§ 693. Curtis Act As to General Council Repealed.—
hen this agreement is ratified by the Seminole Nation
d the United States the same shall serve to repeal all the
visions of the Act of Congress approved June seventh,
hiteen hundred and ninety-seven, in any manner affect-
: the proceedings of the general council of the Seminole
tion.

§ 694. United States to Purchase Additional Lands.—It
ng known that the Seminole Reservation is insufficient
allotments for the use of the Seminole people, upon
sch they, as citizens, holding in severalty, may reason-
ly and adequately maintain their families, the United
ates will make effort to purchase from the Creek Nation,
one dollar and twenty-five cents per acre, two hundred

thousand acres of land, immediately adjoining the eastern boundary of the Seminole Reservation and lying between the North Fork and South Fork of the Canadian River, in trust for and to be conveyed by proper patent by the United States to the Seminole Indians, upon said sum of one dollar and twenty-five cents per acre being reimbursed to the United States by said Seminole Indians; the same to be allotted as herein provided for lands now owned by the Seminoles.

§ 695. **Treaty Binding When Ratified.**—This agreement shall be binding on the United States when ratified by Congress and on the Seminole people when ratified by the general council of the Seminole Nation.

In witness whereof the said Commissioners have hereunto affixed their names at Muskogee, Indian Territory, this sixteenth day of December, A. D. 1897.

Henry L. Dawes,
Tams Bixby,
Frank C. Armstrong,

Archibald S. McKennon,
Thomas B. Needles,
.

Commission to the Five Civilized Tribes.
Allison L. Aylesworth,
Secretary.

John F. Brown,
Okchan Harjo,
William Cully,

K. N. Kinkehee,
Thomas West,
Thomas Factor,
Seminole Commission.
A. J. Brown,
Secretary.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the same be, and is hereby, ratified and confirmed, and all laws and parts of laws inconsistent therewith are hereby repealed.

Approved July 1, 1898.

ORIGINAL SEMINOLE AGREEMENT—WITH AMENDMENTS § 697

ACT MARCH 3, 1903.

Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes. (32 Stat. L. 982.)

696. Seminole Tribal Government Not to Continue after March 4, 1906.—(Sec. 8.) That the tribal government of the Seminole Nation shall not continue longer than the fourth, nineteen hundred and six: **Provided,** That the Secretary of the Interior shall at the proper time furnish the principal chief with blank deeds necessary for all conveyances mentioned in the agreement with the Seminole Nation contained in the Act of July first, eighteen hundred and ninety-eight (Thirtieth Statutes, page five hundred and seven), and said principal chief shall execute and deliver said deeds to the Indian allottees as required by said Act and the deeds for allotment, when duly executed and recorded, shall be recorded in the office of the Dawes Commission prior to delivery and without expense to the allottee until further legislation by Congress, and such records shall have like effect as other public records.

697. Seminole Homestead — Restrictions. — Provided, That the homestead referred to in said act shall be available during the lifetime of the allottee, not exceeding twenty-one years from the date of the deed for the allotment. A separate deed shall be issued for said homestead, and during the time the same is held by the allottee shall not be liable for any debt contracted by the owner thereof.

CHAPTER XLVIII.

SEMINOLE SUPPLEMENTAL AGREEMENT.

Chap. 610.—An Act to ratify an agreement between the Commission to the Five Civilized Tribes and the Seminole tribe of Indians. Concluded October 1899; approved June 2, 1900. (31 Stat. 250.)

§ 698. Preamble.

699. Final Rolls.

700. Death Before Selection.

701. Effective When Ratified.

§ 698. **Preamble.**—Whereas an agreement was made by Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, the commission of the United States to the Five Civilized Tribes, and John F. Brown and K. N. Kinkehee, commissioners on the part of the Seminole tribe of Indians, on the seventh day of October, eighteen hundred and ninety-nine, as follows:

“This agreement by and between the Government of the United States of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Seminole tribe of Indians, in Indian Territory, of the second part, entered into in behalf of said tribe by John F. Brown and K. N. Kinkehee, commissioners duly appointed and authorized thereunto, witnesseth:

§ 699. **Final Rolls.**—“First, That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, pursuant to the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place in said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December eighteen hundred and ninety-nine, and the names of Seminole citizens then living; and the rolls so made, with

oved by the Secretary of the Interior, as provided by Act of Congress, shall constitute the final rolls of Sem- citizens, upon which the allotment of lands and dis- tion of money and other property belonging to the inole Indians shall be made, and to no other persons.

700. Death Before Selection.—"Second. If any mem- of the Seminole tribe of Indians shall die after the y-first day of December, eighteen hundred and ninety- , the lands, money, and other property to which he ld be entitled if living, shall descend to his heirs who Seminole citizens, according to the laws of descent and ibution of the State of Arkansas, and be allotted and ibuted to them accordingly: **Provided**, That in all : where such property would descend to the parents r said laws the same shall first go to the mother in- l of the father, and then to the brothers and sisters, their heirs, instead of the father.

701. Effective When Ratified.—"Third. This agree- to be ratified by the general council of the Seminole on and by the Congress of the United States. n witness whereof the said commissioners hereunto their names, at Muskogee, Indian Territory, this sev- day of October, eighteen hundred and ninety-nine.

nry L. Dawes,

"Archibald S. McKennon,

ns Bixby,

"Thomas B. Needles,

"Commission to the Five Civilized Tribes.

in F. Brown,

"K. N. Kinkehee,

"Seminole Commissioners."

erefore,

it enacted by the Senate and House of Representa- of the United States of America in Congress assem- That the same be, and is hereby, ratified and con- d, and all laws and parts of laws inconsistent there- are hereby repealed.

proved, June 2, 1900.

. CHAPTER XLIX.

**MISCELLANEOUS LEGISLATION SUBSEQUENT TO
CURTIS ACT AND PRIOR TO ACT MAY 27, 1908.**

ACT MAY 31, 1900.

- § 702. Membership of Commission to Five Civilized Tribes Reduced to Four.
- 703. Commission Not to Receive Applications of Those Not Enrolled.
- 704. Mississippi Choctaws May Make Proof of Settlement at Any Time Prior to Approval of Final Rolls.
- 705. Townsites.
- 706. Townsite Commission.
- 707. Secretary May Segregate Townsite.

ACT MARCH 3, 1901.

- 708. Vacancy in Townsite Commission Filled by Secretary.
- 709. Rolls When Approved by Secretary Final.
- 710. Secretary Authorized to Fix Time for Closing Rolls.
- 711. Acts of Creeks or Cherokees Not Valid Until Approved by President.
- 712. Easement for Telegraph and Telephone Lines.
- 713. Telegraph and Telephone Lines, Taxation.
- 714. Regulations by Towns.
- 715. Condemnation of Allotted Lands for Public Purposes.

ACT MARCH 3, 1901.

- 716. Members of Five Civilized Tribes Made United States Citizens.

ACT MAY 27, 1902.

- 717. Enrollment of Certain Creek Children—Death Before Section.
- 718. Original Creek Agreement Putting in Force Creek Law—Descent Repealed.
- 719. Townsites—Townsite Commissions.

MISCELLANEOUS, PRIOR TO ACT MAY 27, 1908. § 702

ACT MAY 27, 1902.

- a. **Fixing Effective Date of Act May 27, 1902.**

ACT FEBRUARY 19, 1903.

- b. **Chapter 27, Mansfield's Digest Put in Force.**
- b. **Clerks of United States Courts Ex Officio Recorders.**
- b. **Instruments Recorded—Filed.**
- b. **Prior Recording Validated.**
- b. **Substitution of Words to Make Act Applicable.**
- b. **Officers Authorized to Take Acknowledgments.**
- b. **Recording Districts Established.**
- b. **Private Parties Authorized to Plat Townsites.**

ACT APRIL 21, 1904.

- b. **Secretary Authorized to Sell Residue of Creek Lands.**
- b. **Removal of Restrictions of Members Not of Indian Blood—
Removal by Secretary.**
- b. **Sale of Segregated Lands of Choctaws and Chickasaws.**
- b. **Surface of Leased Coal and Asphalt Land.**

ACT APRIL 28, 1904.

- b. **Full Probate Jurisdiction Conferred on United States
Courts.**

ACT MARCH 3, 1905.

- b. **Lease by Guardian, Executor or Administrator Void Un-
less Approved by Court.**
- b. **Sale of Lots in Wewoka Confirmed.**
- b. **Enrollment of New-born Choctaw and Chickasaw Children
Authorized.**
- b. **Enrollment of New-born Creek Children Authorized.**
- b. **Enrollment of New-born Seminole Children Authorized.**

ACT MARCH 2, 1906.

- b. **Extending Tribal Governments.**

ACT JUNE 21, 1906.

- b. **Authorizing the Printing of the Rolls.**
- b. **Enrollment of Full-blood Mississippi Choctaws.**

ACT MARCH 1, 1907.

- 741. Filing of Lease, Constructive Notice.
- 742. Tribal Courts of Choctaws and Chickasaws Abolished.

ACT MAY 31, 1900.

Chap 598.—An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes. (31 Stat. 221.)

For salaries of four commissioners, appointed under act of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars:

• § 702. **Membership of Commission to Five Civilized Tribes Reduced to Four.—Provided,** That the number of said commissioners is hereby fixed at four. For expenses of commissioners and necessary expenses of employees and three dollars per diem for expenses of a clerk detailed as special disbursing agent by Interior Department, while on duty with the Commission, shall be paid therefrom; clerical help, including secretary of the Commission and interpreters, five hundred thousand dollars, to be immediately available; for contingent expenses of the Commission, four thousand dollars; in all, five hundred and twenty-four thousand dollars: **Provided further,** That this appropriation may be used by said Commission in the prosecution of all work to be done by or under its direction as required by statute.

§ 703. **Commission Not to Receive Applications of Tribes Not Enrolled.—**That said Commission shall continue to

re-ise all authority heretofore conferred on it by law. But shall not receive, consider, or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such, and its refusal of such applications shall be final when approved by the Secretary of the Interior.

§ 704. **Mississippi Choctaws May Make Proof of Settlement at Any Time Prior to Approval of Final Rolls.**—**Provided,** That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States Commission and by the Secretary of the Interior as Choctaws entitled to allotment: **Provided further,** That all contracts or agreements looking to the sale or incumbrance in any way of the lands to be allotted to said Mississippi Choctaws shall be null and void.

To pay all expenses incident to the survey, platting, and appraisal of town sites in the Choctaw, Chickasaw, Creek, and Cherokee nations, Indian Territory, as required by sections fifteen and twenty-nine of an act entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June twenty-eighth, eighteen hundred and ninety-eight, for the balance of the current year and for the year ending June thirtieth, nineteen hundred and one, the same to be immediately available, sixty-seven thousand dollars, or so much as may be necessary.

§ 705. **Townsites.**—**Provided,** That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into

town lots, streets, alleys, and parks, the sites of such and villages in the Choctaw, Chickasaw, Creek and Cherokee nations, as may at that time have a population of one hundred or more, in such manner as will best subserve the present needs and the reasonable prospective of such towns.

The work of surveying, laying out, and platting town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site which the survey is approved by the Secretary of the Interior. The plat shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the mission to the Five Civilized Tribes, and one with the local authorities, if there be such.

Where in his judgment the best interests of the service require, the Secretary of the Interior may employ the surveying, laying out, and platting of town sites of said nations by contract.

Hereafter the work of the respective town-site commissions provided for in the agreement with the Choctaw and Chickasaw tribes ratified in section twenty-nine of the Act of June twenty-eighth, eighteen hundred and ninety-one, entitled "An Act for the protection of the people of the Indian Territory, and for other purposes," shall begin at any town site immediately upon the approval of the plat by the Secretary of the Interior and not before.

§ 706. **Townsite Commission.**—The Secretary of the Interior may in his discretion appoint a town-site commission consisting of three members, for each of the Creek, Choctaw, Chickasaw, and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe.

Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit

the town lots in the nation for which it is appointed, in conformity with the provisions of any then existing Act of Congress or agreement with the tribe approved by Congress.

The agreement of any two members of the commission to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that Nation.

Every such local commission shall be appointed in the manner provided in the Act approved June twenty-eighth, nineteen hundred and ninety-eight, entitled "An Act for the protection of the people of the Indian Territory."

The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.

As soon as the plat of any town site is approved, the proper commission shall, with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisalment of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the direction of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing Act of Congress or agreement with the tribe approved by Congress,

and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

The Secretary of the Interior may, for good cause, remove any member of any townsite commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy otherwise occurring in like manner as the place was originally filled.

It shall not be required that the townsite limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such townsite limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established:

Provided further, That the exterior limits of all town sites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

§ 707. **Secretary May Segregate Town Sites.**—Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to allotment of the lands therein, and this irrespective of the population of such town site at the time.

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uch town sites shall be surveyed, laid out, and platted, the lands therein disposed of for the benefit of the e in the manner herein prescribed for other town sites: **rovided further**, That whenever any tract of land shall et aside as herein provided which is occupied by a mem- of the tribe, such occupant shall be fully compensated his improvements thereon, under such rules and regu- ns as may be prescribed by the Secretary of the Inte-

othing herein contained shall have the effect of avoid- any work heretofore done in pursuance of the said act une twenty-eighth, eighteen hundred and ninety-eight, ie way of surveying, laying out, or platting of town , appraising or disposing of town lots in any of said ns, but the same, if not heretofore carried to a state ompletion, may be completed according to the provi- hereof.

ACT MARCH 3, 1901.

. 832.—An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian Tribes for the fiscal year ending June thir- tieth, nineteen hundred and two, and for other pur- poses. (31 Stat. 1058.)

pay all expenses incident to the survey, platting, and aisement of town sites in the Choctaw, Chickasaw, k, and Cherokee nations, Indian Territory, as required ections fifteen and twenty-nine of an act entitled "An for the protection of the people of the Indian Terri- , and for other purposes," approved June twenty-eighth, teen hundred and ninety-eight, and all acts mandatory eof and supplementary thereto, one hundred and fifty and dollars: **Provided**,

708. **Vacancy in Town-site Commission Filled by Sec- ry.**—That hereafter the Secretary of the Interior may,

whenever the chief executive of the Choctaw or Chickasaw Nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the death or refusal of the town-site commissioner appointed as chief executive of the Choctaw or Chickasaw Nation to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created.

§ 709. **Rolls, When Approved by Secretary, Final.**—The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent.

§ 710. **Secretary Authorized to Fix Time for Rolls.**—And the Secretary of the Interior is authorized to direct to fix a time by agreement with said tribes, or either of them for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereon, the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto.

§ 711. **Acts of Creeks or Cherokees Not Valid Without Approval by President.**—That no act, ordinance, or resolution of the Creek or Cherokee tribes, except resolutions of adjournment, shall be of any validity until approved by the President of the United States.

When such acts, ordinances, or resolutions passed by the council of either of said tribes shall be approved by the principal chief thereof, then it shall be the duty of the principal chief of said tribe to forward them to the President of the United States, duly certified and sealed, and shall, within thirty days after their reception, approve or disapprove the same.

Said acts, ordinances, or resolutions, when so approved, shall be published in at least two newspapers having

MISCELLANEOUS, PRIOR TO ACT MAY 27, 1908. § 713

side circulation in the tribe to be affected thereby, and when disapproved shall be returned to the tribe enacting the same.

§ 712. **Easement for Telegraph or Telephone Lines.**— (Sec. 3.) That the Secretary of the Interior is hereby authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices for general telephone and telegraph business through an Indian reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed.

No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from the Secretary of the Interior, and the maps defining the location of the lines shall be subject to his approval.

The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval;

§ 713. **Telegraph and Telephone Lines—Taxation.**— And where such lines are not subject to State or Territorial taxation the company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding dollars for each ten miles of line so constructed and maintained; and all such lines shall be constructed and maintained

under such rules and regulation as said Secretary may prescribe.

But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by either State, Territorial, or municipal authority;

and Congress hereby expressly reserves the right to regulate the tolls or charges for the transmission of messages over any lines constructed under the provisions of this Act:

§ 714. **Regulation By Towns.**—Provided, That incorporated cities and towns into or through which such telephone or telegraphic lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities.

§ 715. **Condemnation of Allotted Lands for Public Purposes.**—That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

ACT MARCH 3rd, 1901.

An Act to amend section six, chapter one hundred and nineteen, United States Statutes at Large numbered twenty-four. (31 Stat. L. 1447.)

§ 716. **Members of Five Civilized Tribes Made United States Citizens.**—That section six of Chapter one hundred and nineteen of the United States Statutes at Large, numbered twenty-four, page three hundred and ninety, is hereby amended as follows, to-wit: after the words "civilized life" in line thirteen of said section six insert the words "and every Indian in Indian Territory."

Approved, March 3, 1901.

MISCELLANEOUS, PRIOR TO ACT MAY 27, 1908. § 718

ACT MAY 27, 1902.

ap. 888.—An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes. (32 Stat. 245.)

§ 717. **Enrollment of Certain Creek Children—Death before Selection.**—For salaries of four commissioners, appointed under Acts of Congress, approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dollars: **Provided**, That said commission shall exercise all the powers heretofore conferred upon it by Congress: **Provided further**, That all children born to duly enrolled and recognized citizens of the Creek Nation up to and including the twenty-fifth day of May, nineteen hundred and one, and then living, shall be added to the rolls of citizenship of said nation made under the provisions of an Act entitled "An Act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians and for other purposes," approved March first, nineteen hundred and one, and if any such child has died since the twenty-fifth day of May, nineteen hundred and one, or may hereafter die, before receiving his allotment of land and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall devolve to his heirs and be allotted and distributed to them accordingly.

§ 718. **Original Agreement Putting in Force Creek Law Repealed.**—And provided further, That the Act entitled "An Act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes," approved March first, nineteen hundred and one, be and the same are hereby repealed.

poses," approved March first, nineteen hundred and one, so far as it provides for descent and distribution according to the laws of the Creek Nation, is hereby repealed and descent and distribution of lands and moneys provided in said act shall be in accordance with the provisions of chapter forty-nine of Mansfield's Digest of the Statutes of Arkansas in force in Indian Territory.

§ 719. **Town Sites—Town-site Commissions.**—To pay expenses incident to the survey, platting, and appraisal of town sites in the Choctaw, Chickasaw, Creek, and Cherokee nations, Indian Territory, as required by sections thirteen and twenty-nine of an Act entitled "An Act for protection of the people of the Indian Territory, and for other purposes," approved June twenty-eighth, eight hundred and ninety-eight, and all Acts amendatory thereof or supplemental thereto, fifty thousand dollars: **Provided** That hereafter the Secretary of the Interior may, whenever the chief executive of the Choctaw or Chickasaw nation fails or refuses to appoint a town-site commissioner for any town, or to fill any vacancy caused by the neglect or refusal of the town-site commissioner, appointed by the chief executive of the Choctaw or Chickasaw nation to qualify or act, in his discretion, appoint a commissioner to fill the vacancy thus created: **Provided further,** That the limits of such towns in the Cherokee, Choctaw, Chickasaw nations having a population of less than one hundred people, as in the judgment of the Secretary of the Interior should be established, shall be defined as early as practicable by the Secretary of the Interior in the same manner as provided for towns having over two hundred people under existing law, and the same shall not be subject to allotment. That the land so segregated and reserved from allotment shall be disposed of, in such manner as the Secretary of the Interior may direct, by a town-site commission, one member to be appointed by the Secretary of the Interior and one by the executive of the nation in which

MISCELLANEOUS, PRIOR TO ACT MAY 27, 1908. § 721

uch land is located; proceeds arising from the disposition of such lands to be applied in like manner as the proceeds of other lands in town sites.

ACT MAY 27, 1902.

Joint resolution fixing the time when certain provisions of the Indian Appropriation Act for the year ending June thirtieth, nineteen hundred and three, shall take effect. (32 Stat. L. 742.)

§ 719a. **Fixing of Future Date of Act of May 27, 1902.**—That the Act entitled “An Act making appropriations for the current and contingent expenses of the Indian Department and fulfilling treaty stipulations with the various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes,” shall take effect from and after July first, nineteen hundred and two, except as otherwise specially provided therein. Approved May 27, 1902.

ACT FEBRUARY 19, 1903.

chap. 707.—An Act providing for record of deeds and other conveyances and instruments of writing in Indian Territory, and for other purposes. (32 Stat. 841.)

§ 720. **Chapter 27, Mansfield's Digest, Put in Force.**—That chapter twenty-seven of the Digest of the Statutes of Arkansas, known as Mansfield's Digest of eighteen hundred and eighty-four, is hereby extended to the Indian Territory, so far as the same may be applicable and not inconsistent with any law of Congress:

§ 721. **Clerks of United States Court Ex-officio Recorders.**—Provided, That the clerk or deputy clerk of the United States court of each of the courts of said Territory shall be ex-officio recorder for his district and perform the duties required of recorder in the chapter aforesaid, and use the

seal of such court in cases requiring a seal, and keep records of such office at the office of said clerk or deputy clerk.

§ 722. **Instruments Recorded—Filed.**—It shall be the duty of each clerk or deputy clerk of such court to enter in the books provided for his office all deeds, mortgages, deeds of trust, bonds, leases, covenants, defeasances, and other instruments of writing of or concerning lands, tenements, goods, or chattels; and where such instruments are for a period of time limited on the face of the instrument they shall be filed and indexed, if demanded by the holder thereof, and such filing for the period of twelve months from the filing thereof shall have the same effect in law as if recorded at length. The fees for filing and indexing, and cross-indexing such instruments shall be twenty-five cents, and for recording shall be as set forth in section thirty-two hundred and forty-three of Mansfield's Digest of eighteen hundred and eighty-four.

That the said clerk or deputy clerk of such court shall receive as compensation as such ex-officio recorder for the district all fees received by him for recording instruments provided for in this act, amounting to one thousand and five hundred dollars per annum or less; and all fees so received by him as aforesaid amounting to more than the sum of one thousand eight hundred dollars per annum shall be paid over to the Department of Justice, to be applied to the permanent school fund of the district in which said court is located.

§ 723. **Prior Recording Validated.**—Such instruments heretofore recorded with the clerk of any United States court in Indian Territory shall not be required to be re-recorded under this provision, but shall be transferred to the indexes without further cost, and such records heretofore made shall be of full force and effect, the same as if made under this statute.

MISCELLANEOUS, PRIOR TO ACT MAY 27, 1908. § 727

724. Substitution of Words to Make Act Applicable.—t wherever in said chapter the word "county" occurs e shall be substituted therefor the word "district," wherever the words "State" or "State of Arkansas" ir there shall be substituted therefor the words "Indian ritory," and wherever the words "clerk" or "recorder" ir there shall be substituted the words "clerk or deputy k of the United States court."

725. Officers Authorized to Take Acknowledgments.—acknowledgments of deeds of conveyance taken within Indian Territory shall be taken before a clerk or deputy k of any of the courts in said Territory, a United States missioner, or a notary public appointed in and for said ritory.

726. Recording Districts Established.—All instruments vriting, the filing of which is provided for by law, shall ecoreded or filed in the office of the clerk or deputy clerk he place of holding court in the recording district where l property may be located, and which said recording ricts are bounded as follows: (Recording districts de-bed.)

ACT MARCH 3, 1903.

p. 994.—An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes. (32 Stat. 982.)

727. Private Parties Authorized to Plat Town Sites.—pay all expenses incident to the survey, platting, and aisement of town sites in the Choctaw, Chickasaw, k, and Cherokee nations, Indian Territory, as required ections fifteen and twenty-nine of an act entitled "An

act for the protection of the people of the Indian Territory and for other purposes," approved June twenty-eight hundred and ninety-eight, and all acts amendatory thereof or supplemental thereto, twenty-five thousand dollars: **Provided**, That the money hereby appropriated be applied only to the expenses incident to the surveying, and appraisement of town sites heretofore set and reserved from allotment: **And provided further**, nothing herein contained shall prevent the survey and platting, at their own expense, of town sites by private parties where stations are located along the lines of railroad: **And** the unrestricted alienation of lands for such purposes, recommended by the Commission to the Five Civilized Tribes and approved by the Secretary of the Interior. hereafter the Secretary of the Interior may, whenever requested by the chief executive of the Choctaw or Chickasaw nations or refuses to appoint a town-site commissioner for any town or to fill any vacancy caused by the neglect or refusal of the town-site commissioner appointed by the chief executive of the Choctaw or Chickasaw nations to qualify or in his discretion, appoint a commissioner to fill the vacancy thus created.

ACT APRIL 21, 1904.

Chap. 1402.—An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and five, and for other purposes. (33 Stat. 189.)

§ 728. **Secretary Authorized to Sell Residue of Ceded Lands.**—For salaries of four commissioners appointed under Acts of Congress approved March third, eighteen hundred and ninety-three, and March second, eighteen hundred and ninety-five, to negotiate with the Five Civilized Tribes in the Indian Territory, twenty thousand dol-

and said commission shall conclude its work and terminate on or before the first day of July, nineteen hundred and five, and said commission shall cease to exist on July first, nineteen hundred and five: **Provided**, That said commission shall exercise all the powers heretofore conferred upon it by Congress: **And provided further**, That the Secretary of the Interior is hereby granted authority to sell at public sale in tracts not exceeding one hundred and sixty acres to any one purchaser, under rules and regulations to be made by the Secretary of the Interior, the residue of land in the Creek Nation belonging to the Creek tribe of Indians, consisting of about five hundred thousand acres, and being the residue of lands left over after allotments of one hundred and sixty acres to each of said tribe.

§ 729. **Removal of Restrictions of Members Not of Indian Blood—Removal by Secretary.**—And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed, and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian agent at the Union Agency in charge of the Five Civilized Tribes, if said agent is satisfied upon a full investigation of each individual case that such removal of restrictions is for the best interest of said allottee. The finding of the United States Indian agent and the approval of the Secretary of the Interior shall be in writing and shall be recorded in the same manner as patents for lands are recorded.

§ 730. **Sale of Segregated Land of Choctaws and Chickasaws.**—All unleased lands which are by section fifty-nine in an act entitled "An act to ratify and confirm an agree-

ment with the Choctaw and Chickasaw tribes of India and for other purposes," approved July first, nineteen hundred and two, directed to "be sold at public auction cash," and all other unleased lands and deposits of like character in said nations segregated under any act of Congress, shall instead be sold under direction of the Secretary of the Interior in tracts not exceeding nine hundred and sixty acres to each person, after due advertisement, upon sealed proposals, under regulations to be prescribed by the Secretary of the Interior and approved by the President with authority to reject any or all proposals: **Provide** That the President shall appoint a commission of three persons, one on the recommendation of the principal chief of the Choctaw Nation who shall be a Choctaw by blood, and one upon the recommendation of the governor of the Chickasaw Nation who shall be a Chickasaw by blood, which commission shall have a right to be present at the time of the opening of bids and be heard in relation to the acceptance or rejection thereof.

§ 731. **Surface of Leased Coal and Asphalt Land.**—That the Secretary of the Interior be, and he is hereby, authorized and directed, upon the sale of lands in Indian Territory covered by coal and asphalt leases, to sell such land subject to the right of the lessee to use so much of the surface as may be needed for coke ovens, miners' houses, stores and supply buildings, and such other structures as are generally used in the production and shipment of coal and coke. Lessees may use the tipples and underground workings located on any lease in the production of coal and coke from adjoining leases, and are hereby authorized to surrender leased premises to the owner thereof on giving sixty days notice in writing to such owner and paying all charges and royalties due to the date of surrender: **Provided, however,** That nothing herein contained shall release the lessee from the payment of the stipulated royalty so long as such lessee remains in possession of any of the surface of the land.

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in his lease for any purpose whatever: And pro-
hat any lessee may remove or dispose of any ma-
tools or equipment the lessee may have upon the
nds.

ACT APRIL 28, 1904.

**24.—An Act to provide for additional United States
ndges in the Indian Territory, and for other pur-
oses. (33 Stat. 573.)**

**Full Probate Jurisdiction Conferred on United
ourt.**—(Sec. 2.) All the laws of Arkansas hereto-
in force in the Indian Territory are hereby con-
and extended in their operation, so as to embrace
ons and estates in said Territory, whether Indian,
n, or otherwise, and full and complete jurisdiction
y conferred upon the district courts in said Terri-
he settlements of all estates of decedents, the guar-
s of minors and incompetents, whether Indians,
n, or otherwise. That the sum of twenty thousand
is hereby appropriated, out of any money in the
not otherwise appropriated, for the payment of
of the judges hereby a~~u~~thorized, the same to be im-
y available.

ved, April 28, 1904.

ACT MARCH 3, 1905.

**179.—An Act making appropriations for the current
nd contingent expenses of the Indian Department
nd for fulfilling treaty stipulations with various
ndian tribes for the fiscal year ending June thir-
ieth, nineteen hundred and six, and for other pur-
oses. (33 Stat. 1048.)**

**Lease by Guardian, Executor or Administrator
less Approved by Court.**—It shall be the duty of
etary of the Interior to investigate, or cause to be

investigated, any lease of allotted land in the Indian Territory which he has reason to believe has been obtained by fraud, or in violation of the terms of existing agreements with any of the Five Civilized Tribes, and he shall in such case where, in his opinion, the evidence warrants, refer the matter to the Attorney General for suit in proper United States court to cancel the same, and in cases where it may appear to the court that any lease obtained by fraud, or in violation of such agreements, judgments shall be rendered canceling the same, upon such terms and conditions as equity may prescribe, and it shall be allowable in cases where all parties in interest consent thereto to modify any lease and to continue the same as so modified: **Provided**, No lease made by any administrator, executor, guardian, or curator which has been investigated by and has received the approval of the United States court having jurisdiction of the proceeding shall be subject to review or proceeding by the Secretary of the Interior or Attorney General: **Provided further**, No lease made by any administrator, executor, guardian, or curator shall be valid or enforceable without the approval of the court having jurisdiction of the proceeding.

§ 734. **Sale of Lots in Wewoka Confirmed.**—That the resolutions of the Seminole council, passed and approved on April eighteenth, nineteen hundred, accepting and ratifying the contract and sale made by the Seminole town-commissioners to John F. Brown, of the unsold lots in town of Wewoka, Indian Territory, for the sum of two thousand dollars, and also providing for the distribution of the said money among the Seminole people per capita, be, and the same is hereby, ratified and confirmed.

§ 735. **Enrollment of Newborn Choctaw and Chickasaw Children Authorized.**—That the Commission to the Five Civilized Tribes is hereby authorized for sixty days from the date of the approval of this act to receive and consider

plications for enrollment of infant children born prior September twenty-fifth, nineteen hundred and two, and who were living on said date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.

That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollment of children born subsequent to September twenty-fifth, nineteen hundred and two, and prior to March fourth, nineteen hundred and five, and who were living on said latter date, to citizens by blood of the Choctaw and Chickasaw tribes of Indians whose enrollment has been approved by

Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.

§ 736. **Enrollment of Newborn Creek Children Authorized.**—That the Commission to the Five Civilized Tribes is authorized for sixty days after the date of the approval of this act to receive and consider applications for enrollments of children born subsequent to May twenty-fifth, nineteen hundred and one, and prior to March fourth, nineteen hundred and five, and living on said latter date, to citizens of the Creek Tribe of Indians whose enrollment has been approved by the Secretary of the Interior prior to the date of the approval of this act; and to enroll and make allotments to such children.

§ 737. **Enrollment of Newborn Seminole Children Authorized.**—That the Commission to the Five Civilized Tribes is authorized for ninety days after the date of the approval of this act to receive and consider applications for enrollment of infant children born prior to March fourth, nineteen hundred and five, and living on said latter date, to

citizens of the Seminole Tribe whose enrollment has been approved by the Secretary of the Interior; and to enroll and make allotments to such children, giving to each an equal number of acres of land, and such children shall also share equally with other citizens of the Seminole Tribe in the distribution of all other tribal property and funds.

ACT MARCH 2, 1906.

[No. 7.]—Joint resolution extending the tribal existence and government of the Five Civilized Tribes of Indians in the Indian Territory. (34 Stat. 822.)

§ 738. **Extending Tribal Governments.**—That the tribal existence and present tribal governments of the Choctaw Chickasaw, Cherokee, Creek, and Seminole tribes or nations of Indians in the Indian Territory are hereby continued in full force and effect for all purposes under existing laws until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law.

Approved, March 2, 1906.

ACT JUNE 21, 1906.

Chap. 3504.—An Act making appropriations for the current and contingent expenses of the Indian Department for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven (34 Stat. 325.)

§ 739. **Authorizing the Printing of the Rolls.**—That the Secretary of the Interior shall, upon completion of the approved rolls, have prepared and printed in a permanent record book such rolls of the Five Civilized Tribes and that one copy of such record book shall be deposited in the office of the recorder in each of the recording districts for public inspection. That any person who shall copy any roll

ship of the Creek, Cherokee, Choctaw, Chickasaw, or other tribes of Indians, prepared by or under the direction of the Secretary of the Interior, the Commission to the Five Civilized Tribes or the Commissioner to the Five Civilized Tribes, whether completed or not, or any person who directly or indirectly, exhibit, sell, offer to sell, give away, or in any manner or by any means dispose of, or who shall have in his possession, any plat or rolls, any copy of the same, or a copy of any part thereof, shall be deemed guilty of a misdemeanor, punishable by imprisonment for not exceeding two years: **Provided,** That this act shall not apply to any persons authorized by the Secretary of the Interior, the Commissioner of Indian Affairs, or the Commissioner to the Five Civilized Tribes to copy, exhibit, or use such rolls, or a copy thereof, for any purpose necessary or required by law.

0. Enrollment of Full-Blood Mississippi Choctaws. A distinction shall be made in the enrollment of full-blooded Mississippi Choctaws who have been identified by the States Commission to the Five Civilized Tribes, and who have been removed to the Indian Territory prior to March 1, nineteen hundred and six, and who shall furnish proof thereof.

ACT MARCH 1, 1907.

2285.—An Act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and eight. (34 Stat. 1015.)

1. Filing of Lease—Constructive Notice.—The filing here or hereafter of any lease in the office of the United States Indian agent, Union agency, Muskogee, Indian Territory, shall be deemed constructive notice.

§ 742. **Tribal Courts of Choctaws and Chickasaws Abolished.**—That upon the passage of this act tribal courts of the Choctaw and Chickasaw Nations shall be abolished, and no officer of said courts shall thereafter have any authority whatever to do or perform any act theretofore authorized by any law in connection with said courts or to receive any pay for the same; and all civil and criminal causes then pending in any such court in said nations shall be transferred to the proper United States court in said Territory by filing with the clerk of the court the original papers.

CHAPTER I.

ACT APRIL 26, 1906.

1. **1876.—An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes.** (34 Stat. 137.)


- 2. Enrollment.
- 3. Enrollment of Minor Children—Rolls Closed—Contest.
- 4. Creek Freedmen.
- 5. Cherokee Freedmen.
- 6. Allotments of Choctaw-Chickasaw Freedmen, Homestead.
- 7. Transfer from Freedman Roll to Citizen Roll Prohibited.
- 8. Patents in Name of Deceased Allottee—Record of Patent.
- 9. Removal of Chief Executive of Tribe.
- 10. Failure of Chief Executive to Sign Conveyance.
- 11. Authorizing Delivery of Patents in Seminole Nation.
- 12. Reservation from Allotment.
- 13. Appraisement and Sale of Pine Timber.
- 14. Records of Land Offices, How Preserved.
- 15. Disbursement of Loyal Seminole Claim Confirmed.
- 16. Court of Claims to Determine Controversies.
- 17. Tribal Schools.
- 18. Collection and Disbursement of Tribal Funds.
- 19. Accounting of Tribal Affairs.
- 20. Sale of Lots Reserved for Miners.
- 21. Failure to Pay Purchase Price of Lots.
- 22. Reservation of Coal and Asphalt Lands.
- 23. Conveyance of Reserved Lands to Company, etc., Entitled.
- 24. Patent to Murrow Indian Orphans' Home.
- 25. Unallotted Fractions.
- 26. Lands to Murrow Indian Orphans' Home.
- 27. Tribal Buildings, etc., to be Sold.
- 28. Sale of Residue of Tribal Lands—Preference Right to Freedmen.
- 29. Disposition of Proceeds.
- 30. Jurisdiction of Tribal Suits.
- 31. Set-off Allowed Defendants.
- 32. Restrictions Upon Full-blood Indians Extended.
- 33. Deeds Before Issuance of Patent, Valid.
- 34. Deed in Pursuance of Contract, Void.
- 35. Unrestricted Land Taxable.
- 36. Leases.


§ 744**LANDS OF THE FIVE CIVILIZED TRIBES.**

- 778. Lands to Revert in Default of Heirs.
- 779. Removal of Restrictions, Adult and Minor Heirs.
- 780. Wills.
- 781. Roads.
- 782. Light of Power Companies.
- 783. Municipal Corporations—Assessment for Local Improvement.
- 784. Taxation of Railroads.
- 785. Tribal Lands Not to Become Public Lands.
- 786. Tribal Governments Continued.

§ 743. Enrollment.—That after the approval of the Commissioner to the Five Civilized Tribes no person shall be enrolled as a citizen or freedman of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes of Indians in the Indian Territory, except as herein otherwise provided, unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of application; and no motion to reopen or reconsider a citizenship case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions rendered prior to the passage of this act, in which cases such motion shall be made within sixty days after the passage of this act: **Provided,** That the Secretary of the Interior may enroll persons whose names appear upon any of the rolls and for whom the records in charge of the Commissioner to the Five Civilized Tribes show application made prior to December first, nineteen hundred and five, and which was not allowed solely because not made within the time prescribed by law.

§ 744. Enrollment of Minor Children—Rolls Closed.—(Sec. 2.) That for ninety days after the passage hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as



ACT APRIL 26, 1906.

§ 745

the Choctaw, Chickasaw, Cherokee, or Creek Tribes, applications for enrollment pending at the approval and for the purpose of enrollment under this section legitimate children shall take the status of the mother and allotments shall be made to children so enrolled. If any person of the Cherokee Tribe shall fail to receive the quantity of land to which he is entitled as an allotment, he shall be paid out of any of the funds of such tribe an amount equal to twice the appraised value of the amount of land so deficient. The provisions of section nine of the agreement ratified by act approved March first, nineteen hundred and one, authorizing the use of funds of the tribe for equalizing allotments, are hereby restored and reenacted, and after the expiration of nine months from the date of the original selection of an allotment of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, and after the expiration of six months from the date of this act as to allotments heretofore made, suit shall be instituted against such allotment: **Provided** that the rolls of the tribes affected by this act shall be completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date: **Provided further**, That nothing herein shall be construed so as to hereinafter permit any person to file an application for enrollment in any tribe after the date for filing application has been fixed by agreement between said tribe and the United States: **Provided** that nothing herein shall apply to the intermarried persons in the Cherokee Nation, whose cases are now pending in the Supreme Court of the United States.

Creek Freedmen.—(Sec. 3.) That the approved Creek freedmen shall include only those persons whose names appear on the roll prepared by J. W. Dunn, by authority of the United States prior to March fourteenth, nineteen hundred and sixty-seven, and their de-

scendants born since said roll was made, and those fully admitted to citizenship in the Creek Nation subsequent to the date of the preparation of said roll, and descendants born since such admission, except such, as have heretofore been enrolled and their enrollment proved by the Secretary of the Interior.

§ 746. **Cherokee Freedmen.**—The roll of Cherokee men shall include only such persons of African descent either free colored or the slaves of Cherokee citizens and their descendants, who were actual personal bona fide residents of the Cherokee Nation August eleventh, eighteen hundred and sixty-six, or who actually returned and established such residence in the Cherokee Nation on or before February eleventh, eighteen hundred and sixty-seven. This provision shall not prevent the enrollment of an Indian son who has heretofore made application to the Commission to the Five Civilized Tribes or its successor and has been adjudged entitled to enrollment by the Secretary of the Interior.

§ 747. **Allotments of Choctaw-Chickasaw Freedmen Homesteads.**—Lands allotted to freedmen of the Choctaw and Chickasaw Tribes shall be considered "homesteads" and shall be subject to all the provisions of this and any other act of Congress applicable to homesteads of the Choctaw and Chickasaw Tribes.

§ 748. **Transfer From Freedmen Roll to Citizen Roll Prohibited.**—(Sec. 4.) That no name shall be transferred from the approved freedmen, or any other approved roll of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and such

reds shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

§ 749. Patents in Name of Deceased Allottee—Record of Patents.—(Sec. 5.) That all patents or deeds to allottees in any of the Five Civilized Tribes to be hereafter issued shall issue in the name of the allottee, and if any such allottee shall die before such patent or deed becomes effective, the title to the lands described therein shall inure to and vest in his heirs, and in case any allottee shall die after restrictions have been removed, his property shall descend to his heirs or his lawful assigns, as if the patent or deed had issued to the allottee during his life, and all patents heretofore issued, where the allottee died before the deed became effective, shall be given like effect; and all patents or deeds to allottees and other conveyances affecting lands of any of said tribes shall be recorded in the office of the Commissioner to the Five Civilized Tribes, and when recorded shall convey legal title, and shall be delivered under the direction of the Secretary of the Interior to the allottee entitled to receive the same: **Provided,** The provisions of this section shall not affect any rights involved in patents pending before the Commissioner to the Five Civilized Tribes or the Department of the Interior at the date of the approval of this act.

§ 750. Removal of Chief Executive of Tribe.—(Sec. 6.) That if the principal chief of the Choctaw, Cherokee, Creek, Seminole Tribe, or the governor of the Chickasaw Tribe shall refuse or neglect to perform the duties devolving upon him, he may be removed from office by the President of the United States, or if any such executive become permanently disabled, the office may be declared vacant by the President of the United States, who may fill any vacancy arising from removal, disability or death of the incumbent, by appointment of a citizen by blood of the tribe.



§ 754

LANDS OF THE FIVE CIVILIZED TRIBES.

§ 751. **Failure of Chief Executive to Sign Conveyance.**—If any such executive shall fail, refuse or neglect, thirty days after notice that any instrument is ready for his signature, to appear at a place to be designated by the Secretary of the Interior and execute the same, such instrument may be approved by the Secretary of the Interior without such execution, and when so approved and recorded shall convey legal title, and such approval shall be conclusive evidence that such executive or chief refused or neglected after notice to execute such instrument.

§ 752. **Authorizing Delivery of Patents in Seminole Nation.**—**Provided,** That the principal chief of the Seminole Nation is hereby authorized to execute the deeds to allottees in the Seminole Nation prior to the time when Seminole government shall cease to exist.

§ 753. **Reservation From Allotment.**—(Sec. 7.) The Secretary of the Interior shall, by written order, within ninety days from the passage of this act, segregate and reserve from allotment sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, the west half of section sixteen, in township nine south, range twenty-six east, Choctaw Nation, Indian Territory, and the northeast quarter of section sixteen, in township nine south, range twenty-seven east, Choctaw Nation, Indian Territory, except such portions of said lands upon which substantial and valuable improvements were erected prior to the passage of this act and not for speculation, but by members and freedmen of the tribes and for themselves and for themselves for allotment purposes where such identical members or freedmen of said tribes now desire to select same as portions of their allotment and the action of the Secretary of the Interior in such segregation shall be conclusive.

§ 754. **Appraisement and Sale of Pine Timber.** The Secretary of the Interior shall cause to be estimated

ed the standing pine timber on all of said land, and d segregated shall not be allotted, except as herein-provided, to any member or freedman of the Choc-d Chickasaw Tribes. Said segregated land and the nber thereon shall be sold and disposed of at public , or by sealed bids for cash, under the direction of retary of the Interior.

Records of Land Offices—How Preserved.—(Sec. at the records of each of the land offices in the In-rritory, should such office be hereafter discontinued, transferred to and kept in the office of the clerk of ted States court in whose district said records are ated. The officer having custody of any of the re-ertaining to the enrollment of the members of the r, Chickasaw, Cherokee, Creek, or Seminole Tribes, disposition of the land and other property of said upon proper application and payment of such fees Secretary of the Interior may prescribe, may make copies of such records, which shall be evidence with the originals thereof; but fees shall not be de- for such authenticated copies as may be required ers of any branch of the Government nor for such ed copies as such officer, in his discretion, may deem o furnish. Such fees shall be paid to bonded officers oyees of the Government designated by the Secre-the Interior, and the same or so much thereof as may ssary may be expended under the direction of the y of the Interior for the purposes of this section, r unexpended balance shall be deposited in the y of the United States, as are other public moneys.

Disbursement of Loyal Seminole Claim Con--(Sec. 9.) The disbursements, in the sum of one and eighty-six thousand dollars, to and on ac- the loyal Seminole Indians, by James E. Jenkins, agent appointed by the Secretary of the Interior, A. J. Brown as administrator de bonis non, under

an act of Congress approved May thirty-first, nineteen hundred, appropriating said sum, be, and the same are hereby ratified and confirmed: **Provided**, That this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

§ 757. **Court of Claims to Determine Controversies.**—That the Court of Claims is hereby authorized and directed to hear, consider, and adjudicate the claims against the Mississippi Choctaws of the estate of Charles F. Winton, deceased, his associates and assigns, for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation, and to render judgment thereon on the principle of quantum meruit, in such amount or amounts as may appear equitable or justly due therefor, which judgment, if any, shall be paid from any funds now or hereafter due such Choctaws by the United States. Notice of such suit shall be served on the governor of the Choctaw Nation, and the Attorney General shall appear and defend the said suit on behalf of said Choctaws.

§ 758. **Tribal Schools.**—(Sec. 10.) That the Secretary of the Interior is hereby authorized and directed to assume control and direction of the schools in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes, with the lands and all school property pertaining thereto, March fifth, nineteen hundred and six, and to conduct such schools under rules and regulations to be prescribed by him, retaining tribal educational officers, subject to dismissal by the Secretary of the Interior, and the present system so far as practicable, until such time as a public school system shall have been established under Territorial or State government, and proper provision made thereunder for the education of the Indian children of said tribes, and he is hereby authorized and directed to set aside a sufficient amount of any funds, invested or otherwise, in the Treasury of the United States, belonging to said tribes, including the roy

ies on coal and asphalt in the Choctaw and Chickasaw tions, to defray all the necessary expenses of said schools ng, however, only such portion of said funds of each be as may be requisite for the schools of that tribe, not eeding in any one year for the respective tribes the ount expended for the scholastic year ending June thir- th, nineteen hundred and five; and he is further au- rized and directed to use the remainder, if any, of the ids appropriated by the act of Congress approved March rd, nineteen hundred and five, "for the maintenance, engthening, and enlarging of the tribal schools of the erokee, Creek, Choctaw, Chickasaw and Seminole Na- ns," unexpended March fourth, nineteen hundred and , including such fees as have accrued or may hereafter rue under the act of Congress approved February nine- nth, nineteen hundred and three, Statutes at Large, vol- e thirty-two, page eight hundred and forty-one, which s are hereby appropriated, in continuing such schools as ay have been established, and in establishing such new hools as he may direct, and any of the tribal funds so t aside remaining unexpended when a public school sys- m under a future State or Territorial government has en established, shall be distributed per capita among the izens of the nations, in the same manner as other funds.

§ 759. Collection and Disbursement of Tribal Funds.— ec. 11.) That all revenues of whatever character accru- : to the Choctaw, Chicksaw, Cherokee, Creek, and Sem- le Tribes, whether before or after dissolution of the al governments, shall, after the approval hereof, be col- ed by an officer appointed by the Secretary of the In- or under rules and regulations to be prescribed by him; he shall cause to be paid all lawful claims against said es which may have been contracted after July first, eteen hundred and two, or for which warrants have been ularly issued, such payments to be made from any ds in the United States Treasury belonging to said

tribes. All such claims arising before dissolution of the tribal governments shall be presented to the Secretary of the Interior within six months after such dissolution, and he shall make all rules and regulations necessary to carry this provision into effect and shall pay all expenses incident to the investigation of the validity of such claims or indebtedness out of the tribal funds: **Provided**, That all taxes accruing under tribal laws or regulations of the Secretary of the Interior shall be abolished from and after December thirty-first, nineteen hundred and five, but this provision shall not prevent the collection after that date nor after dissolution of the tribal government of all such taxes due up to and including December thirty-first, nineteen hundred and five, and all such taxes levied and collected after the thirty-first day of December, nineteen hundred and five, shall be refunded.

§ 760. **Accounting of Tribal Officers.**—Upon dissolution of the tribal governments, every officer, member, or representative of said tribes, respectively, having in his possession, custody, or control any money or other property of any tribe shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money of the tribe in his possession, custody, or control, and shall deliver all other tribal property so held by him, to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property so held by him, or to pay and deliver the same as herein provided for sixty days from dissolution of the tribal government, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by a fine of not exceeding five thousand dollars or by imprisonment not exceeding five years, or by both such fine and imprisonment according to the laws of the United States relating to such offense, and shall be liable in civil proceedings to be prosecuted in behalf of and in the name of the tribe for the amount or value of the money or property so withheld.

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§ 764

§ 761. **Sale of Lots Reserved for Miners.**—(Sec. 12.) That the Secretary of the Interior is authorized to sell, upon such terms and under such rules and regulations as he may prescribe, all lots in towns in the Choctaw and Chickasaw Nations reserved from appraisement and sale for use in connection with the operation of coal and asphalt mining leases or for the occupancy of miners actually engaged in working for lessees operating coal and asphalt mines, the proceeds arising from such sale to be deposited in the Treasury of the United States as are other funds of said tribes.

§ 762. **Failure to Pay Purchase Price of Lots.**—If the purchaser of any town lot sold under the provision of law regarding the sale of town sites in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Nations fail for sixty days after approval hereof to pay the purchase price or any installment thereof then due, or shall fail for thirty days to pay the purchase price or any installment thereof falling due hereafter, he shall forfeit all rights under his purchase, together with all money paid thereunder, and the Secretary of the Interior may cause the lots upon which such forfeiture is made to be resold at public auction for cash, under such rules and regulations as he may prescribe. All municipal corporations in the Indian Territory are hereby authorized to vacate streets and alleys, or parts thereof, and said streets and alleys, when vacated, shall revert to and become the property of the abutting property owners.

§ 763. **Reservation of Coal and Asphalt Lands.**—(Sec. 13.) That all coal and asphalt lands whether leased or unleased shall be reserved from sale under this act until the existing leases for coal and asphalt lands shall have expired or until such time as may be otherwise provided by law.

§ 764. **Conveyance of Reserved Lands to Company, Etc., Entitled.**—(Sec. 14.) That the lands in the Choctaw,

Chickasaw, Cherokee, Creek, and Seminole Nations reserved from allotment or sale under any act of Congress for the use or benefit of any person, corporation, or organization shall be conveyed to the person, corporation, or organization entitled thereto: **Provided**, That if any tract or parcel thus reserved shall before conveyance thereof be abandoned for the use for which it was reserved by the party in whose interest the reservation was made, such tract or parcel shall revert to the tribe and be disposed of as other surplus lands thereof: **Provided further**, That this section shall not apply to land reserved from allotment because of the right of any railroad or railway company therein in the nature of an easement for right of way, depot, station grounds, water stations, stock yards, or other uses connected with the maintenance and operation of such company's railroad, title to which tracts may be acquired by the railroad or railway company under rules and regulations to be prescribed by the Secretary of the Interior at a valuation to be determined by him; but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality.

§ 765. **Patent to Murrow Indian Orphans' Home.**—The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation are, with the approval of the Secretary of the Interior, hereby authorized and directed to issue patents to the Murrow Indian Orphans' Home, a corporation of Atoka, Indian Territory, in all cases where tracts have been allotted under the direction of the Secretary of the Interior for the purpose of allowing the allottees to donate the tract so allotted to said Murrow Indian Orphans' Home.

766. Unallotted Fractions.—In all cases where entitled citizens of either the Choctaw or Chickasaw Tribe have taken their homestead and surplus allotment and have retained over an unallotted right to less than ten dollars on the basis of the allotment value of said land, such unallotted right may be conveyed by the owners thereof to the Murrow Indian Orphans' Home aforesaid; and when said conveyed right shall amount in the aggregate to not more than ten acres of average allottable land, land to be conveyed shall be allotted to the said Murrow Indian Orphans' Home, and certificate and patent shall issue therefor to said Murrow Indian Orphans' Home.

767. Lands to Murrow Indian Orphans' Home.—And he is hereby authorized to be conveyed to said Murrow Indian Orphans' Home, in the manner hereinbefore provided for the conveyance of land, the following-described lands in the Choctaw and Chickasaw Nations, to-wit: Sections eighteen and nineteen in township two north, range five east; the south half of the northeast quarter, the northeast quarter of the northeast quarter, the south half of the northwest quarter of the northeast quarter, the north half of the southeast quarter, the northeast quarter of the southeast quarter, the south half of the northwest quarter of the southeast quarter, the northeast quarter of the northwest quarter of the southeast quarter, the northwest quarter of the southeast quarter of the southwest quarter, and the northwest quarter of the northwest quarter of section twenty-four, and the northwest quarter of the southwest quarter, the north half of the southwest quarter of the northeast quarter, the south half of the southwest quarter of the southwest quarter, the northeast quarter of the southwest quarter of the southwest quarter, and the southwest quarter of the northwest quarter of the southwest quarter of section twenty-three, and the southwest quarter of the southwest quarter of the southeast quarter of section twenty-six, and the southeast quarter of the northwest

quarter of the northwest quarter, the south half of the northeast quarter of the northwest quarter, the northeast quarter of the northeast quarter of the northwest quarter, and the east half of the southeast quarter of the northwest quarter of section twenty-five, all in township two north, range eleven east, containing one thousand seven hundred and ninety acres, as shown by the Government Survey, for the purpose of the said Home.

§ 768. **Tribal Buildings, Etc., to Be Sold.**—(Sec. 15.) The Secretary of the Interior shall take possession of all buildings now or heretofore used for governmental, school, and other tribal purposes, together with the furniture therein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe, and deposit the proceeds, less expenses incident to the appraisement and sale, in the Treasury of the United States to the credit of the respective tribes: **Provided**, That in the event said lands are embraced within the geographical limits of a State or Territory of the United States, such State or Territory or any county or municipality therein shall be allowed one year from date of establishment of said State or Territory within which to purchase any such lands and improvements within their respective limits at not less than the appraised value. Conveyances of lands disposed of under this section shall be executed, recorded, and delivered in like manner and with like effect as herein provided for other conveyances.

§ 769. **Sale of Residue of Tribal Lands—Preference Right to Freedmen.**—(Sec. 16.) That when allotments as provided by this and other acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, the residue of lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the

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f the respective tribes. In the disposition of the
ed lands of the Choctaw and Chickasaw Nations
octaw and Chicksaw freedman shall be entitled to
ence right, under such rules and regulations as the
y of the Interior may prescribe, to purchase at the
ed value enough and to equal with that already al-
o him forty acres in area. If any such purchaser
make payment within the time prescribed by said
d regulations, then such tract or parcel of land shall
o the said Indian tribes and be sold as other surplus
ereof. The Secretary of the Interior is hereby au-
to sell, whenever in his judgment it may be de-
any of the unallotted land in the Choctaw and
aw Nations, which is not principally valuable for
agricultural, or timber purposes, in tracts of not
ig six hundred and forty acres to any one person,
ir and reasonable price, not less than the present ap-
value. Conveyances of lands sold under the provi-
this section shall be executed, recorded, and deliv-
like manner and with like effect as herein provided
er conveyances: **Provided further,** That agricul-
nds shall be sold in tracts of not exceeding one hun-
d sixty acres to any one person.

. **Disposition of Proceeds.**—(Sec. 17.) That when
lotted lands and other property belonging to the
r, Chickasaw, Cherokee, Creek, and Seminole tribes
ans have been sold and the moneys arising from
les or from any other source whatever have been
o the United States Treasury to the credit of said
respectively, and when all the just charges against
ls of the respective tribes have been deducted there-
nd remaining funds shall be distributed per capita
members then living and the heirs of deceased mem-
ose names appear upon the finally approved rolls of
epective tribes, such distribution to be made under
d regulations to be prescribed by the Secretary of
rior.



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LANDS OF THE FIVE CIVILIZED TRIBES.

§ 771. **Jurisdiction of Tribal Suits.**—(Sec. 18.) the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes respectively, either before or after the dissolution of tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, when such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and terminate all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested the costs and necessary expenses incurred in maintaining and prosecuting such suits: **Provided,** That proceedings in which any of said tribes is a party pending before a court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected, but shall proceed to final disposition.

§ 772. **Set-off Allowed Defendants.**—Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover money claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe and any balance that may be found due by any tribe to such tribes shall be paid by the Treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him.

§ 773. **Restrictions Upon Full Blood Indians Extended** --- (Sec. 19.) That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of the

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ess such restriction shall, prior to the expiration of
riod, be removed by act of Congress; and for all
s the quantum of Indian blood possessed by any
of said tribes shall be determined by the rolls of
of said tribes approved by the Secretary of the In-
Provided, however, That such full-blood Indians of
said tribes may lease any lands other than home-
or more than one year under such rules and regu-
as may be prescribed by the Secretary of the In-
and in case of the inability of any full-blood owner
instead, on account of infirmity or age, to work or
is homestead, the Secretary of the Interior, upon
f such inability, may authorize the leasing of such
ad under such rules and regulations.

Deeds Before Issuance of Patent Valid.—Pro-
rther, That conveyances heretofore made by mem-
any of the Five Civilized Tribes subsequent to the
of allotment and subsequent to removal of restric-
ere patents thereafter issue, shall not be deemed or
valid solely because said conveyances were made
issuance and recording or delivery of patent or
ut this shall not be held or construed as affecting
dity or invalidity of any such conveyance, except
nabove provided.

Deed in Pursuance of Contract Void.—And every
euted before, or for the making of which a contract
ement was entered into before the removal of re-
is be, and the same is hereby declared void.

Unrestricted Land Taxable.—Provided further,
lands upon which restrictions are removed shall be
to taxation, and the other lands shall be exempt
xation as long as the title remains in the original

§ 777. **Leases.**—(Sec. 20.) That after the approval of this act all leases and rental contracts, except lease rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blooded allottees of the Choctaw, Chickasaw, Cherokee, Creole and Seminole Tribes shall be in writing and subject to approval by the Secretary of the Interior and shall be absolutely void and of no effect without such approval: **Provided**, allotments of minors and incompetents may be rented under order of the proper court: **Provided further**, That all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory.

§ 778. **Lands to Revert in Default of Heirs.**—(Sec. 21.) That if any allottee of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes die intestate without will, or heir or heirs, or surviving spouse, seized of all or any portion of his allotment prior to the final distribution of tribal property, and such fact shall be known by the Secretary of the Interior, the lands allotted to him shall revert to the tribe and be disposed of as herein provided for other lands; but if the death of such allottee be not known by the Secretary of the Interior before final distribution of the tribal property, the land shall escheat to and vest in such State or Territory as may be formed to include such lands. That heirs of deceased Mississippi Choctaws who died before making proof of removal to and settlement in the Choctaw country and within the period prescribed by law for making such proof may within sixty days from the passage of this act appear before the Commissioner to the Five Civilized Tribes and make such proof as would be required if made by such deceased Mississippi Choctaws: the decision of the Commissioner to the Five Civilized Tribes shall be final therein, and no appeal therefrom shall be allowed.

779. Removal of Restrictions—Adult and Minor Heirs.—(Sec. 22.) That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian Territory. And in case of the organization of a State or Territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

§ 780. Wills.—(Sec. 23.) Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interests therein: **Provided,** That no will of a full-blood Indian devising real estate shall be valid, if such last will and testament disinherits the parent, wife, spouse, or children of such full-blood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian Territory, or a United States commissioner.

781. Roads.—(Sec. 24.) That in the Choctaw, Chickasaw and Seminole Nations public highways or roads two rods in width, being one rod on each side of the section line, may be established on all section lines; and all allottees, purchasers, and others shall take title to such land subject to this provision, and if buildings or other improvements are damaged in consequence of the establishment of public highways or roads, such damages accruing prior

to the inauguration of a State government shall be mined under the direction of the Secretary of the Interior and be paid for from the funds of said tribes, respectively.

All expenses incident to the establishment of public ways or roads in the Creek, Cherokee, Choctaw, Chickasaw and Seminole Nations, including clerical hire, per diem, salary, and expenses of viewers, appraisers, and commissioners, shall be paid under the direction of the Secretary of the Interior from the funds of the tribe or nation in which such public highways or roads are established. Any person, or corporation obstructing any public highway or road, and who shall fail, neglect, or refuse for a period of ten days after notice to remove or cause to be removed any all obstructions from such public highway or road, shall be deemed guilty of a misdemeanor, and upon conviction he be fined not exceeding ten dollars per day for each day in excess of said ten days which said obstruction is permitted to remain: **Provided, however,** That notice of the establishment of public highways or roads need not be given to allottees or others, except in cases where such public highways or roads are obstructed, and every person obstructing any such public highway or road, as aforesaid, shall also be liable in a civil action for all damages sustained by any person who has in any manner what has been damaged by reason of such obstruction.

§ 782. **Light or Power Companies.**—(Sec. 25.) Any light, or power company doing business within the limits of the Indian Territory, in compliance with the laws of the United States that are now or may be in force there, and the same are hereby, invested and empowered with the right of locating, constructing, owning, operating and maintaining canals, reservoirs, auxiliary works, and a dam or dams across any non-navigable stream within the limits of said Indian Territory, for the purpose of obtaining a sufficient supply of water to manufacture and generate water, electric, or other power, light, and

to utilize and transmit and distribute such power, light, heat to other places for its own use or other individuals, corporations, and the right of locating, constructing, erecting, operating, equipping, using and maintaining the necessary pole lines and conduits for the purpose of transmitting and distributing such power, light, and heat to places within the limits of said Indian Territory.

With the right to locate, construct, own, operate, use and maintain such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through the Indian Territory, together with the right to acquire, by condemnation, purchase or agreement between the parties, such land as may be deemed necessary for the locating, constructing, erecting, operating, using and maintaining of such dams, canals, reservoirs, auxiliary steam works, pole lines, and conduits in or through any land held by any Indian tribe, band, person, individual, corporation, or municipality within said Indian Territory, or in or through any lands in said Indian Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation is hereby granted to any company complying with the provisions of this act: **Provided,** That the purchase from agreements with individual Indians, where the right of alienation has not theretofore been granted by law, shall be subject to approval by the Secretary of the Interior.

In the case of the failure of any light, or power company to make amicable settlement with any individual owner, occupant, allottee, tribe, nation, corporation, or municipality of any lands or improvements sought to be condemned or appropriated under this act all compensation and damages shall be paid to the dissenting individual owner, occupant, allottee, tribe, nation, corporation, or municipality by reason of the appropriation and condemnation of said lands and improvements shall be determined as provided in sections one and seventeen of an act of Congress entitled "An

Act to grant a right of way through Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes," approved February twenty-eighth, nineteen hundred and two (Public Numbered Twenty-six), and all such proceedings hereunder shall conform to said sections, except that sections three and four of said act shall have no application, and except that hereafter the plats required to be filed by said act shall be filed with the Secretary of the Interior and with the Commissioner to the Five Civilized Tribes, and where the words "Principal Chief or Governor" of any tribe or nation occur in said act, for the purpose of this act there is inserted the words Commissioner to the Five Civilized Tribes. Whenever any such dam or dams, canals, reservoirs and auxiliary steam works, pole lines, and conduits are to be constructed within the limits of any incorporated city or town in the Indian Territory, the municipal authorities of such city or town shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such cities and towns: **Provided**, That all rights granted hereunder shall be subject to the control of the future Territory or State within which the Indian Territory may be situated.

§ 783. **Municipal Corporations—Assessment for Local Improvements.**—(Sec. 26.) That in addition to the powers now conferred by law, all municipalities in the Indian Territory having a population of over two thousand to be determined by the last census taken under any provision of law or ordinance of the council of such municipality, are hereby authorized and empowered to order improvements of the streets or alleys or such parts thereof as may be included in an ordinance or order of the common council with the consent of a majority of the property owners whose property as herein provided is liable to assessment therefor for the proposed improvement; and said council is em-

red and authorized to make assessments and levy taxes the consent of a majority of the property owners whose erty is assessed, for the purpose of grading, paving, damizing, curbing, or guttering streets and alleys, or ing sidewalks upon and along any street, roadway, or within the limits of such municipality, and the cost of grading, paving, macadamizing, curbing, guttering, or walk constructed, or other improvements under au- ity of this section, shall be so assessed against the abut- property as to require each parcel of land to bear the of such grading, paving, macadamizing, curbing, gut- ng, or sidewalk, as far as it abuts thereon, and in the : of streets or alleys to the center thereof; and the cost treet intersections or crossing may be borne by the city apporportioned to the quarter blocks abutting thereon upon same basis. The special assessments provided for by : section and the amount to be charged against each lot parcel of land shall be fixed by the city council or under authority and shall become a lien on such abutting prop- y, which may be enforced as other taxes are enforced ler the laws in force in the Indian Territory. The total ount charged against any tract or parcel of land shall : exceed twenty per centum of its assessed value, and re shall not be required to be paid thereon exceeding one centum per annum on the assessed value and interest at per centum on the deferred payments.

for the purpose of paying for such improvements the : council of such municipality is hereby authorized to e improvement script or certificates for the amount due such improvements, such script or certificates to be pay- : in annual installments and to bear interest from date at rate of six per centum per annum, but no improvement pt shall be issued or sold for less than its par value. All said municipalities are hereby authorized to pass all inances necessary to carry into effect the above provi- is and for the purpose of doing so may divide such icipality into improvement districts.

§ 784. **Taxation of Railroads.**—That the tangible property of railroad corporations (exclusive of rolling stock) located within the corporate limits of incorporated cities and towns in the Indian Territory shall be assessed and taxed in proportion to its value the same as other property is assessed and taxed in such incorporated cities and towns; and all such city or town councils are hereby empowered to pass such ordinances as may be necessary for the assessment, equalization, levy and collection, annually, of a tax on all property except as herein stated within the corporate limits and for carrying the same into effect: **Provided,** That should any person or corporation feel aggrieved by any assessment of property in the Indian Territory, an appeal from such assessment may be taken within sixty days by original petition to be filed in United States court in the district in which such city or town is located, and the question of the amount and legality of such assessment, and the validity of the ordinance under which such assessment is made may be determined by such court and the costs of such proceeding shall be taxed and apportioned between the parties as the court shall find to be just and equitable.

§ 785. **Tribal Lands Not to Become Public Lands.**—(Sec. 27.) That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, upon the dissolution of said tribes, shall not become public lands nor property of the United States, but shall be held in trust by the United States for the use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear by the rolls as finally concluded as heretofore and hereinafter provided for: **Provided,** That nothing herein contained shall interfere with any allotments heretofore or hereafter made or to be made under the provisions of this or any other act of Congress.

§ 786. **Tribal Governments Continued.**—(Sec. 28.) That the tribal existence and present tribal governments of the

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w, Chickasaw, Cherokee, Creek, and Seminole Tribes
ons are hereby continued in full force and effect for
poses authorized by law, until otherwise provided by
ut the tribal council or legislature in any of said
or nations shall not be in session for a longer period
irty days in any one year: **Provided**, That no act,
nce or resolution (except resolutions of adjourn-
of the tribal council or legislature of any of said
or nations shall be of any validity until approved by
esident of the United States: **Provided further**, That
tract involving the payment or expenditure of any
or affecting any property belonging to any of said
or nations made by them or any of them or by any
thereof, shall be of any validity until approved by
esident of the United States.

. 29.) That all acts and parts of acts inconsistent
ie provisions of this act be, and the same are hereby,
ed.

roved, April 26, 1906.

CHAPTER LI.

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Chap. 199.—An Act for the removal of restrictions part of the lands of allottees of the Five Civil Tribes, and for other purposes. (35 Stat. 312.)

- § 787. Status of Allotted Lands in Regard to Alienation.
- 788. Leases of Restricted Land.
- 789. Enrollment Records, Evidence of Age and Quantum of Indian Blood.
- 790. Status of Prior Leases.
- 791. Lands from Which Restrictions Removed, Taxation, Extension.
- 792. Effect of Attempted Alienation of Restricted Land.
- 793. Probate Courts Given Jurisdiction of Indian Minors.
- 794. Secretary Authorized to Sue for Allottees.
- 795. No Contests After Sixty Days.
- 796. Judge of County Court Authorized to Approve Conveyances.
- 797. Status of Inherited Land in Regard to Alienation.
- 798. Choctaw-Chickasaw School Warrants.
- 799. Collection of Royalties on Mineral Leases.
- 800. Disposition of Allotment Records.
- 801. Accounting of Tribal Affairs.
- 802. Townsites.

§ 787. **Status of Allotted Lands in Regard to Alienation.**—That from and after sixty days from the date of the act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: . . . lands, including homesteads, of said allottees enrolled as term-married whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads

id allottees enrolled as mixed-blood Indians having or more than half Indian blood, including minors of degrees of blood, and all allotted lands of enrolled bloods, and enrolled mixed-bloods of three-quarters or Indian blood, including minors of such degrees of , shall not be subject to alienation, contract to sell, of attorney, or any other incumbrance prior to April y-sixth, nineteen hundred and thirty-one, except that ecretary of the Interior may remove such restrictions, y or in part, under such rules and regulations concern- rms of sale and disposal of the proceeds for the bene- the respective Indians as he may prescribe. The tary of the Interior shall not be prohibited by this rom continuing to remove restrictions as heretofore, othing herein shall be construed to impose restric- removed from land by or under any law prior to the ge of this act. No restriction of alienation shall be rued to prevent the exercise of the right of eminent in in condemning rights of way for public purposes allotted lands, and for such purposes sections thir- to twenty-three inclusive, of an act entitled "An Act unt the right of way through Oklahoma Territory and ndian Territory to the Enid and Anadarko Railway any, and for other purposes," approved February y-eighth, nineteen hundred and two (Thirty-second tes at Large, page forty-three), are hereby continued ce in the State of Oklahoma.

88. **Leases of Restricted Land.**—(Sec. 2.) That all other than homesteads allotted to members of the Civilized Tribes from which restrictions have not been ed may be leased by the allottee if an adult, or by ian or curator under order of the proper probate if a minor or incompetent, for a period not to exceed ears, without the privilege of renewal: **Provided,** leases of restricted lands for oil, gas or other mining ses, leases of restricted homesteads for more than one

year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: **And provided further,** That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.

§ 789. **Enrollment Records Evidence of Age and Quantum of Indian Blood.**—(Sec. 3.) That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes and of no other persons to determine questions arising under this act and the enrollment records of the Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman.

§ 790. **Status of Prior Leases.**—That no oil, gas, or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this act, but the same shall be subject to the approval of the Secretary of the Interior as if this act had not been passed: **Provided,** That the owner or owners of any allotted land from which restrictions are removed by this act, or have been removed by previous acts of Congress, or by the Secretary of the Interior, or may hereafter be removed under and by authority of any act of Congress, shall have the power to cancel and annul any oil, gas, or mineral lease on said land whenever the owner or owners of said land and the owner or owners of the lease thereon agree in writing to terminate said lease and file with the Secretary of the

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Interior, or his designated agent, a true copy of the agreement in writing canceling said lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the county where the land is situate.

§ 791. Lands From Which Restrictions Removed—Taxation—Exemption.—(Sec. 4.) That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes: **Provided,** That allotted lands shall not be subjected or held liable, to any form of personal claim, or demand, against the allottees arising or existing prior to the removal of restrictions, other than contracts heretofore expressly permitted by law.

§ 792. Effect of Attempted Alienation of Restricted Land.—(Sec. 5.) That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate, made before or after the approval of this act, which affects the title of the land allotted to allottees of the Five Civilized Tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this act shall be absolutely null and void.

§ 793. Probate Courts Given Jurisdiction of Indian Minors.—(Sec. 6.) That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma

who shall be citizens of that State or now domiciled therein, as he may deem necessary to inquire into and investigate the conduct of guardians or curators having in charge the estates of such minors, and whenever such representative or representatives of the Secretary of the Interior be of opinion that the estate of any minor is not properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or is being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of procuring any necessary remedy, either civil or criminal, as both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and be subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior a guardian or curator for such minors, without fee or charge.

§ 794. **Secretary Authorized to Sue for Allottees.**—The said representatives of the Secretary of the Interior are further authorized, and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made, at the request of any allottee having restricted land

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shall, without charge, except the necessary court and recording fees and expenses, if any, in the name of the allottee, take such steps as may be necessary, including the bringing of any suit or suits and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be made or executed in violation of this act or any other act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands.

Supplemental to the funds appropriated and available for expenses connected with the affairs of the Five Civilized Tribes, there is hereby appropriated, for the salaries and expenses arising under this section, out of any funds in the Treasury not otherwise appropriated, the sum of ninety thousand dollars, to be available immediately, and until July first, nineteen hundred and nine, for expenditure under the direction of the Secretary of the Interior: **Provided**, That no restricted lands of living minors shall be sold or encumbered, except by leases authorized by law, by order of the court, or otherwise.

And there is hereby further appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately available and available until expended as the Attorney General may direct, the sum of fifty thousand dollars, to be used in the payment of necessary expenses incident to any suits brought at the request of the Secretary of the Interior in the eastern judicial district of Oklahoma: **Provided**, That the sum of ten thousand dollars of the above amount, or so much thereof as may be necessary, may be expended in the prosecution of cases in the western judicial district of Oklahoma.

Any suit brought by the authority of the Secretary of the Interior against the vendee or mortgagee of a town lot, against whom the Secretary of the Interior may find upon investigation no fraud has been established, may be

dismissed and the title quieted upon payment of the full balance due on the original appraisement of such lot: **Provided**, That such investigation must be concluded within six months after the passage of this act.

Nothing in this act shall be construed as a denial of the right of the United States to take such steps as may be necessary, including the bringing of any suit and the prosecution and appeal thereof, to acquire or retain possession of restricted Indian lands, or to remove cloud therefrom, or clear title to the same, in cases where deeds, leases, or contracts of any other kind or character whatsoever have been or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon the alienation thereof; such suits to be brought on the recommendation of the Secretary of the Interior, without cost or charges to the allottees, the necessary expenses in so doing to be defrayed from the money appropriated by this act.

§ 795. **No Contests After Sixty Days.**—(Sec. 7.) That no contest shall be instituted after sixty days from the date of the selection of any allotment hereafter made, nor after ninety days from the approval of this act in case of selections made prior thereto by or for any allottee of the Five Civilized Tribes, and, as early thereafter as practicable, deed or patent shall issue therefor.

§ 796. **Judge of County Court Authorized to Approve Conveyances.**—(Sec. 8.) That section twenty-three of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, is hereby amended by adding at the end of said section the words "or a judge of county court of the State of Oklahoma."

§ 797. **Status of Inherited Land in Regard to Allotment.**

Sec. 9.) That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: **Provided**, That no conveyance of any interest of any full-blood Indian heir in said land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: **Provided further**, That if any member of the Five Civilized Tribes of one-half or more Indian blood should die leaving issue surviving, born since March fourth, nineteenth hundred and six, the homestead of such deceased shall remain inalienable, unless restrictions against the same are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the maintenance and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; and if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions: **And if** this be not done, or in the event the issue herein provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: **And further**, That the provisions of section twenty-four of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section.

Choctaw-Chickasaw School Warrants.—(Sec. 10.) The Secretary of the Interior is hereby authorized and directed to pay out of any moneys in the Treasury of the United States, belonging to the Choctaw or Chickasaw nations, respectively, any and all outstanding general and special warrants duly signed by the auditor of public accounts of the Choctaw and Chickasaw nations, and drawn upon the national treasurers thereof prior to January first, nineteenth hundred and seven, with six per cent interest per annum from the respective dates of said warrants: **Pro-**

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vided, That said warrants be presented to the United Indian agent at the Union Agency, Muskogee, Okl within sixty days from the passage of this act, to with the affidavits of the respective holders of said warrants that they purchased the same in good faith for valuable consideration, and had no reason to suspect in the issuance of said warrants: **Provided further** that such warrants remaining in the hands of the original holder shall be paid by said Secretary when it is shown that the services for which said warrants were issued were actually performed by said payee.

§ 799. **Collection of Royalties on Mineral Leases.**

11.) That all royalties arising on and after July first, nineteen hundred and eight, from mineral leases of a Seminole lands heretofore or hereafter made, which shall be subject to the supervision of the Secretary of the Interior shall be paid to the United States Indian agent, Union Agency, for the benefit of the Indian lessor or his representative to whom such royalties shall thereafter be paid; and no such lease shall be made after said date except with the allottee or owner of the land: **Provided** that the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on the thirtieth, nineteen hundred and eight.

§ 800. **Disposition of Allotment Records.**—(Sec. 11.) That all records pertaining to the allotment of lands of the Five Civilized Tribes shall be finally deposited in the hands of the United States Indian agent, Union Agency, which as the Secretary of the Interior shall determine such records shall be taken, and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum immediately available as the Secretary of the Interior may direct, the sum of fifteen thousand dollars, or so much thereof as may be necessary to enable the Secretary of the Interior to furnish the various counties of the State

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Oklahoma certified copies of such portions of said records as affect title to lands in the respective counties.

§ 801. **Accounting of Tribal Officers.**—(Sec. 13.) That the second paragraph of section eleven of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, is hereby amended to read as follows:

That every officer, member, or representative of the Five Civilized Tribes, respectively, or any other person having in his possession, custody, or control, any money or other property, including the books, documents, records, or any other papers, of any of said tribes, shall make full and true account and report thereof to the Secretary of the Interior, and shall pay all money of the tribe in his possession, custody, or control and shall deliver all other tribal properties so held by him to the Secretary of the Interior, and if any person shall willfully and fraudulently fail to account for all such money and property so held by him, or to pay and deliver the same as herein provided, prior to July thirty-first, nineteen hundred and eight, he shall be deemed guilty of embezzlement and upon conviction thereof shall be punished by fine of not exceeding five thousand dollars, or by imprisonment not exceeding five years, or by both such fine and imprisonment, according to the laws of the United States relating to such offense, and shall be liable to civil proceedings to be prosecuted in behalf of and in the name of the tribe or tribes in interest for the amount or value of the money or property so withheld.

§ 802. **Town Sites.**—(Sec. 14.) That the provisions of section thirteen of the act of Congress approved April twenty-sixth, nineteen hundred and six (Thirty-fourth Statutes at Large, page one hundred and thirty-seven), shall not apply to town lots and town sites heretofore estab-



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lished, surveyed, platted, and appraised under the direction of the Secretary of the Interior, but nothing herein contained shall be construed to authorize the conveyance of any interest in the coal or asphalt underlying said lots.

Approved May 27, 1908.

CHAPTER LII.

MISCELLANEOUS LEGISLATION SUBSEQUENT TO ACT MAY 27, 1908.

ACT MAY 29, 1908.

- 803. Sale of Land for School Purposes Authorized.**

ACT JUNE 25, 1910.

- 804. Deeds Issued After Death of Allottee, Effect of.**

ACT MARCH 3, 1911.

- 805. Deputy May Sign Allotment Deed for Secretary of Interior.**

ACT FEBRUARY 19, 1912.

- 806. Sale of Surface of Segregated Coal Lands Authorized.**
807. Lessee to Have Option to Purchase.
808. Right of Entry for Prospecting Retained.
809. Resale Without Regard to Appraised Value.
810. Sales, How Conducted.
811. Lands Not Valuable for Coal or Asphalt.
812. Patent After Purchase Price Paid.
813. Appropriation for Expenses of Appraisement, etc.
814. Secretary to Prescribe Rules and Regulations.

ACT AUGUST 24, 1912.

- 815. Sale of Timber Land Authorized.**

ACT AUGUST 24, 1912.

- 816. Segregated Coal Lands—Improvements.**
817. Acceptance of Purchase Price of Town Lots.
818. Extending Time for Classifying and Appraising Coal and Asphalt Lands.
819. Extending Time for Classifying and Appraising Coal and Asphalt Lands.

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ACT DECEMBER 8, 1913.

- 820. Extending Time for Classifying and Appraising Coal and Asphalt Lands and Improvements.**

ACT MARCH 27, 1914.

- 821. Allotted Land Within Drainage District.**
822. Maximum Assessment, \$15.00 per acre.

ACT AUGUST 1, 1914.

- 823. Office of Superintendent of Five Civilized Tribes Created.**

ACT MAY 25, 1918.

- 824. Superintendent of Five Civilized Tribes Authorized to Approve Uncontested Leases, Except Oil and Gas Leases.**

ACT JUNE 14, 1918.

- 825. Determination of Heirship.**
826. Lands of Full-blood Indians Subject to Participation.

ACT MAY 29, 1908.

Chap. 216.—An Act to authorize the Secretary of the Interior to issue patents in fee to purchasers of Indian lands under any law now existing or hereafter enacted, and for other purposes. (35 Stat. 444.)

§ 803. Sale of Land for School Purposes Authorized—
(Sec. 10.) That the Secretary of the Interior is hereby authorized to sell for use for school purposes to school district of the State of Oklahoma, from the unallotted lands of the Five Civilized Tribes, tracts of land not to exceed two acres in any one district, at prices and under regulations to be prescribed by him, and proper conveyances of such lands shall be executed in accordance with existing laws regarding the conveyance of tribal property; and the Secretary of the Interior also shall have authority to

move the restrictions on the sale of such lands, not to exceed two acres in each case, as allottees of the Five Civilized Tribes, including full bloods and minors, may desire to sell for school purposes.

ACT JUNE 25, 1910.

Chap. 431.—An Act providing for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of allotments, and for other purposes. (36 Stat. 855.)

§ 804. **Deeds Issued After Death of Allottee, Effect Of.**—(Sec. 32.) Where deeds to tribal lands in the Five Civilized Tribes have been or may be issued, in pursuance of any tribal agreement or act of Congress, to a person who had died, or who hereafter dies before the approval of such deed, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assigns of such deceased grantee as if the deed had issued to the deceased grantee during life.

(Sec. 33.) That the provisions of this act shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma, except as provided in section thirty-two.

Approved, June 25, 1910.

ACT MARCH 3, 1911.

(36 Stat. L. 1069.)

§ 805. **Deputy May Sign Allotment Deed for Secretary of Interior.**—That the Secretary of the Interior be, and he is hereby, authorized to designate an employee or employees of the Department of the Interior to sign, under the direction of the Secretary, in his name and for him, his approval of tribal deeds to allottees, to purchasers of town lots, to purchasers of unallotted lands, to persons, corporations, or organizations for lands reserved to them under the law for

their use and benefit, and to any tribal deeds made and executed according to law for any of the Five Civilized Tribes of Indians in Oklahoma.

ACT FEBRUARY 19, 1912.

Chap. 46.—An Act to provide for the sale of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes. (37 Stat. 67.)

§ 806. **Sale of Surface of Segregated Coal Lands Authorized.**—That the Secretary of the Interior is hereby authorized to sell at not less than the appraised price to be fixed as hereinafter provided, the surface, leased or unleased, of the lands of the Choctaw and Chickasaw Nations in Oklahoma segregated and reserved by order of the Secretary of the Interior dated March twenty-fourth, nineteen hundred and three, authorized by the act approved July first, nineteen hundred and two. The surface hereby referred to shall include the entire estate save the coal and asphalt reserved. Before offering such surface for sale the Secretary of the Interior, under such regulations as he may prescribe, shall cause the same to be classified and appraised by three appraisers, to be appointed by the President, with compensation to be fixed by him, not to exceed for salaries and expenses for each appraiser the sum of fifteen dollars per day for the time actually engaged in making such classification and appraisement. The classification and appraisement of the surface shall be by tracts, according to the Government survey of said lands, except that lands which are especially valuable by reason of proximity to towns and cities may, in the discretion of the Secretary of the Interior, be subdivided into lots or tracts containing not more than one acre. In appraising said surface the value of improvements thereon belonging to the Choctaw or Chickasaw Nations, except such improvements as have been placed on coal or asphalt lands leased for mining,

poses, shall be taken into consideration. The surface shall be classified as agricultural, grazing, or as suitable for town lots. The classification and appraisement provided for herein shall be completed within six months from the date of the passage of this act, shall be sworn to by the appraisers, and shall become effective when approved by the Secretary of the Interior: **Provided**, That in the proceedings and deliberation of said appraisers in the process of said appraisement and in the approval thereof the Choctaw and Chickasaw Nations may present for consideration facts, figures, and arguments bearing upon the value of said property.

§ 807. **Lessee to Have Option to Purchase.**—(Sec. 2.) That after such classification and appraisement has been made, each holder of a coal or asphalt lease shall have a right for sixty days, after a notice in writing, to purchase, at the appraised value and upon the terms and conditions hereinafter prescribed, a sufficient amount of the surface of the land covered by his lease to embrace improvements actually used in present mining operations or necessary for future operations up to five per centum of such surface, the number, location, and extent of the tracts to be thus purchased to be approved by the Secretary of the Interior: **Provided**, That the Secretary of the Interior may, in his discretion, enlarge the amount of land to be purchased by any such lessee to not more than ten per centum of such surface: **Provided further**, That such purchase shall be taken and held as a waiver by the purchaser of any and all rights to appropriate to his use any other part of the surface of such land, except for the purpose of future operations, prospecting, and for ingress and egress, as hereinafter reserved: **Provided further**, That if any lessee shall fail to apply to purchase under the provisions of this section within the time specified, the Secretary of the Interior may, in his discretion, with the consent of the lessee, designate and reserve from sale such tract or tracts as he

may deem proper and necessary to embrace improvements actually used in present mining operations, or necessary for future operations, under any existing lease, and dispose of the remaining portion of the surface within such lease free and clear of any claim by the lessee, except for the purposes of future operations, prospecting, and for ingress and egress, as hereinafter reserved.

§ 808. **Right of Entry for Prospecting Retained.**—(Sec. 3.) That sales of the surface under this act shall be upon the conditions that the Choctaw and Chickasaw Nations, their grantees, lessees, assigns, or successors, shall have the right at all times to enter upon said lands for the purpose of prospecting for coal or asphalt thereon, and also the right of underground ingress and egress, without compensation to the surface owner, and upon the further condition that said nations, their grantees, lessees, assigns, or successors, shall have the right to acquire such portions of the surface of any tract, tracts, or rights thereto as may be reasonably necessary for prospecting or for the conduct of mining operations or for the removal of deposits of coal and asphalt upon paying a fair valuation for the portion of the surface so acquired. If the owner of the surface and the then owner or lessee of such mineral deposits shall be unable to agree upon a fair valuation for the surface so acquired, such valuation shall be determined by three arbitrators, one to be appointed, in writing, a copy to be served on the other party by the owner of the surface, one in like manner by the owner or lessee of the mineral deposits, and the third to be chosen by the two so appointed; and in case the two arbitrators so appointed should be unable to agree upon a third arbitrator within thirty days, then and in that event, upon the application of either interested party, the United States district judge in the district within which said land is located shall appoint the third arbitrator: **Provided,** That the owner of such mineral deposits or lessee thereof shall have the right of entry upon the surface so

be acquired for mining purposes immediately after the failure of the parties to agree upon a fair valuation and the appointment, as above provided, of an arbitrator by the said owner or lessee.

§ 809. **Resale Without Regard to Appraised Value.**—(Sec. 4.) That upon the expiration of two years after the lands have been first offered for sale the Secretary of the Interior, under rules and regulations to be prescribed by him, shall cause to be sold to the highest bidder for cash the surface of any lands remaining unsold and of any surface lands forfeited by reason of non-payment of any part of the purchase price, without regard to the appraised value thereof: **Provided**, That the Secretary of the Interior is authorized to sell at not less than the appraised value to the McAlester Country Club, of McAlester, Oklahoma, the surface of not to exceed one hundred and sixty acres in section seventeen, township five north, range fifteen east: **Provided further**, That the mineral underlying the surface of the lands condemned for the State penitentiary at McAlester, Oklahoma, under the Indian appropriation act approved March third, nineteen hundred and nine, shall be subject to condemnation, under the laws of the State of Oklahoma, for State penitentiary purposes: **And provided further**, That said mineral shall not be mined for other than State penitentiary purposes.

§ 810. **Sales, How Conducted.**—(Sec. 5.) That the sales herein provided for shall be at public auction under rules and regulations and upon terms to be prescribed by the Secretary of the Interior, except that no payment shall be deferred longer than two years after the sale is made. All agricultural lands shall be sold in tracts not to exceed one hundred and sixty acres, and deeds shall not be issued to any one person for more than one hundred and sixty acres of agricultural land, grazing lands in tracts not to exceed one hundred and forty acres, and lands especially valuable

by reason of proximity to towns or cities may, in the discretion of the Secretary of the Interior, be sold in lots or tracts containing not less than one acre each. All deferred payments shall bear interest at five per centum per annum, and if default be made in any payment when due all rights of the purchaser thereunder shall, at the discretion of the Secretary of the Interior, cease and the lands shall be taken possession of by him for the benefit of the two nations, and the money paid as the purchase price of such lands shall be forfeited to the Choctaw and Chickasaw tribes of Indians.

§ 811. **Lands Not Valuable for Coal or Asphalt.**—(Sec. 6.) That if the mining trustees of the Choctaw and Chickasaw Nations and the three appraisers herein provided for, or a majority of the said trustees and appraisers, shall find that such tract or tracts cannot be profitably mined for coal or asphalt and can be more advantageously disposed of by selling the surface and the coal and asphalt together, such tract or tracts may be sold in that manner, in the discretion of the Secretary of the Interior, and patents issued for said lands as provided by existing laws: **Provided**, That this section shall not apply to land now leased for the purpose of mining coal or asphalt within the segregated and reserved area herein described.

§ 812. **Patent After Purchase Price Paid.**—(Sec. 7.) That when full purchase price for any property sold herein is paid, the chief executives of the two tribes shall execute and deliver, with the approval of the Secretary of the Interior, to each purchaser, an appropriate patent or instrument of conveyance conveying to the purchaser the property so sold, and all conveyances made under this act shall convey the fee in the land with reservation to the Choctaw and Chickasaw tribes of Indians of the coal and asphalt in such land, and shall contain a clause or clauses reciting and containing the reservations, restrictions, covenants, and

ditions under which the said property was sold, as herein provided, and said conveyances shall specifically provide the reservations, restrictions, covenants, and conditions therein contained shall run with the land and bind grantees, successors, representatives, and assigns of the purchaser of the surface: **Provided**, That the purchaser of surface of any coal or asphalt land shall have the right any time before final payment is due to pay the full chase price on the surface of said coal or asphalt land, and accrued interest, and shall thereupon be entitled to payment therefor, as herein provided.

813. Appropriation for Expenses of Appraisement.—(Sec. 8.) That there is hereby appropriated, out of the moneys in the Treasury not otherwise appropriated belonging to the Choctaw and Chickasaw tribes of Indians, a sum of fifty thousand dollars to pay expenses of the classification, appraisement, and sales herein provided for, and the proceeds received from the sales of lands hereunder shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and disposed of in accordance with section seventeen of an act entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and sixteen, and the Indian appropriation act approved March third, nineteen hundred and eleven.

§ 814. Secretary to Prescribe Rules and Regulations.—(Sec. 9.) That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules, regulations, terms, and conditions not inconsistent with this act as he may deem necessary to carry out its provisions, including the establishment of an office during the sale of this land at McAlester, LeFlore County, Oklahoma.

Approved, February 19, 1912.

ACT AUGUST 24, 1912.

Chap. 368.—An Act to amend an Act entitled “An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes,” approved April twenty-sixth, nineteen hundred and six (Thirty-fourth Statutes at Large, page one hundred and thirty-seven). (3497.)

§ 815. **Sale of Timber Land Authorized.**—That the Secretary of the Interior be, and he is hereby, authorized upon such terms and conditions, under such regulations in such tracts as he shall deem advisable, the land and timber, together or separately, reserved from allotment under the provisions of section seven of the act entitled “An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes,” approved April twenty-sixth, nineteen hundred and six (Thirty-fourth Statutes at Large, page one hundred and thirty-seven).

Approved, August 24, 1912.

ACT AUGUST 24, 1912.

An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian Tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and thirteen (37 Stat. 518.)

§ 816. **Segregated Coal Lands—Improvements.**—That the Secretary of the Interior to make the appraisal and sale hereinafter provided, five thousand dollars: **Provided,** That the houses and other valuable improvements not including fencing and tillage, placed upon the segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in Oklahoma, by private individuals, while in ac-

ion of said land and prior to February nineteenth, n hundred and twelve, and not purchased by the In-
ations, shall be appraised independently of the sur-
the land on which they are located and shall be sold
e land at public auction at not less than the com-
ppraised value of the improvements and the surface
land upon which they are located. Said improve-
shall be sold for cash and the appraisalment and sale
same shall be made under the direction of the Secre-
f the Interior, and ninety-five per centum of the
realized from the sale of the improvements shall be
er under the direction of the Secretary of the Inte-
the owner of the improvements and the appropriation
efore made for this purpose shall be reimbursed out
five per centum retained from the sale of the said im-
ements: **Provided**, That any improvements remaining
at the expiration of two years from the time when
ered for sale shall be sold under such regulations and
of sale, independent of their appraised value, as the
ry of the Interior may prescribe: **Provided further**,
ersons owning improvements so appraised may remove
e at any time prior to the sale thereof, in which event
ppraised value of the improvements and land shall be
d by deducting the appraised value of the improve-
so removed: **Provided further**, That this section shall
ply to improvements placed on said lands by coal and
leases for mining purposes, but improvements located
ls leased for mining purposes belonging to, or here-
paid for by, the Choctaw and Chickasaw Nations shall
raised and the appraised value thereof shall be added
appraised value of the land at the time of the sale:
ed further, That where any cemetery now exists on
d segregated coal and asphalt lands, the surface of
d within said cemetery, together with the land ad-
the same, where necessary, not exceeding twenty
n the aggregate to any one cemetery, and where a
was in existence on said lands on February nine-

teenth, nineteen hundred and twelve, land not exceeding one acre for each church may, in the discretion of the Secretary of the Interior, be sold to the proper party, association, or corporation, under such terms, conditions, and regulations as he may prescribe, provided application to purchase the same for such purpose is made within sixty days from the date of the approval of this act.

§ 817. **Acceptance of Purchase Price of Town Lots.**—That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to accept payment to the full amount of the purchase money due, including interest to date of payment, on any town lots originally sold as provided in agreements with any of the Five Civilized Tribes and declared forfeited by reason of non-payment of amount due and not resold.

§ 818. **Extending Time for Classifying and Appraising Coal and Asphalt Lands.**—That the Act of Congress approved February nineteenth, nineteen hundred and twelve (Public Number ninety-one), being "An act to provide for the sale of the surface of the coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes," be, and the same is hereby, amended to provide that the classification and appraisalment of such lands shall be completed not later than December first, nineteen hundred and twelve.

Approved, August 24, 1912.

ACT JUNE 30, 1913.

Chap. 4.—An Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fourteen.
(38 Stat. 77.)



319. Extending Time for Classifying and Appraising and Asphalt Lands.—That the Act of Congress approved February nineteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page sixty-seven), being “An act to provide for the sale of the surface of the coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes,” be, and the same is hereby, amended to provide that the classification and appraisement of such lands shall be completed not later than December first, nineteen hundred and thirteen, and the sum of \$10,000, to be paid out of Choctaw and Chickasaw tribal funds, is hereby approved for the completion of the work.

ACT DECEMBER 8, 1913.

1.]—Joint resolution extending time for completion of classification and appraisement of surface of segregated coal and asphalt lands of the Choctaw and Chickasaw Nations and of the improvements thereon, and making appropriation therefor. (38 Stat. 767.)

820. Extending Time for Appraising and Classifying and Asphalt Lands and Improvements.—That the Act of Congress approved February nineteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page sixty-seven), being “An act to provide for the sale of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations, and for other purposes,” be, and the same is hereby, amended to provide that the classification and appraisement of the surface of said segregated lands as required by said act and the classification and appraisement of the improvements thereon as required by section eighteen of the Act of Congress approved August twenty-fourth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, pages five hundred and eighteen to five hundred and thirty-one), shall be completed not later than thirty days from the date of approval of this resolution: **Pro-**

vided, That at the expiration of such time any classification, appraisement, or other work incident thereto remaining unfinished shall be completed by the Secretary of the Interior under rules and regulations to be prescribed by him, and the sum of \$5,000, to be paid out of the Choctaw and Chickasaw tribal funds, is hereby appropriated for such purpose.

Approved, December 8, 1913.

ACT MARCH 27, 1914.

Chap. 46.—An Act to provide for drainage of Indian allotments of the Five Civilized Tribes. (38 Stat. 310.)

§ 821. **Allotted Lands Within Drainage District.**—That whenever a drainage district is organized in any county in the Five Civilized Tribes of the State of Oklahoma, under the laws of that State, for the purpose of draining the lands within such district, the Secretary of the Interior is authorized, in his discretion, to pay from the funds or moneys arising from any source under his control or under the control of the United States, and which would be prorated to such allottee, the assessment for drainage purposes against any Indian allottee or upon the lands of any allottee who is not subject to taxation or whose lands are exempt from taxation or from assessment for taxation under the treaties or agreements with the tribe to which such allottee may belong, or under any Act of Congress; and such amount so paid out shall be charged against such allottee's pro rata share of any funds to his credit under the control of the Secretary of the Interior of the United States: **Provided,**

§ 822. **Maximum Assessment of \$15.00 Per Acre.**—That the Secretary of the Interior, before paying out such fund shall designate some person with a knowledge of the subject of drainage, to review the schedules of assessment against each tract of land and to review the land assessed to assess



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whether such Indian allottee, or his lands not subject to taxation, have been assessed more than their pro rata share as compared with other lands located in said district equally situated and deriving like benefits. And if such lands have been assessed justly when compared with other assessments, then, in that event, said funds shall be paid to the proper county in which said drainage district is to be organized, or, in the opinion of the Secretary of the Interior, to the construction company or bondholder shown to be entitled to the funds arising from such assessment: **And provided further,** That in any event such assessment on any land allotment shall not exceed \$15.00 per acre, and no assessment shall be made unless the Indian allottee, or his legal guardian, shall consent thereto: **And provided further,** That nothing in this act shall be so construed as to deprive any allottee of any right which he might lawfully have individually to apply to the courts for the purpose of having his rights adjudicated.

Approved, March 27, 1914.

ACT AUGUST 1, 1914.

Act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and fifteen. (38 Stat. 598.)

823. Office of Superintendent of Five Civilized Tribes created. (Sec. 17.) **Provided,** That effective September 1, nineteen hundred and fourteen, the offices of the Commissioner of the Five Civilized Tribes and Superintendent of the Indian Agency, in Oklahoma, be, and the same are hereby created, and in lieu thereof there shall be appointed by the President, by and with the advice and consent of the

Senate, a Superintendent for the Five Civilized Tribes, with his office located in the State of Oklahoma, at a salary \$5,000.00 per annum, and said Superintendent shall exercise the authority and perform the duties now exercised by the Commissioner to the Five Civilized Tribes and Superintendent of the Union Agency, with authority to reorganize the department and to eliminate all unnecessary clerk subject to the approval of the Secretary of the Interior.

ACT MAY 25, 1918.

(40 Stat. L. —.)

§ 824. **Superintendent of Five Civilized Tribes Authorized to Approve Uncontested Leases, Except Oil and Gas.** (Sec. 18.) For expenses of administration of the affairs of the Five Civilized Tribes, Oklahoma, and the compensation of employes, one hundred and eighty-five thousand: **Provided**, That a report shall be made to Congress by the Superintendent for the Five Civilized Tribes through the Secretary of the Interior, showing in detail the expenditure of all moneys appropriated by this provision: **Provided further**, That hereafter no part of said appropriation shall be used in forwarding the undisputed claims to be paid from individual moneys of restricted allottees, or their heirs, in forwarding uncontested agricultural and mineral leases excluding oil and gas leases, made by individual restricted Indian allottees, or their heirs, to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases, except oil and gas leases, now required to be approved under existing law by the Secretary of the Interior, shall be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: **Provided, however**, That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the same to the Secretary of the Interior within thirty days from the date of said decision or order.

ACT JUNE 14, 1918.

(40 Stat. L. —.)

§ 825. **Determination of Heirship.**—A determination of the question of fact as to who are the heirs of any deceased citizen allottee of the Five Civilized Tribes of Indians who may die or may have heretofore died, leaving restricted heirs, by the probate court of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State for the determination of heirship in closing up the estates of deceased persons, shall be conclusive of said question: **Provided**, That an appeal may be taken in the manner and to the court provided by law, in cases of appeal in probate matters generally: **Provided further**, That where the time limited by the laws of said State for the institution of administration proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administration proceedings in said courts, a petition may be filed therein having for its object the determination of such heirship and the case shall proceed in all respects as if administration proceedings upon other proper grounds had been regularly begun, but this proviso shall not be construed to reopen the question of the determination of an heirship already ascertained by competent judicial authority under existing laws: **Provided further**, That said petition shall be verified, and in all cases arising hereunder service by publication may be had on all unknown heirs, the service to be in accordance with the method of serving non-resident defendants in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be considered equally with parties personally served or voluntarily appearing.

§ 826. **Lands of Full-Blood Indians Subject to Partition.**
—The lands of full-blood members of any of the Five Civilized Tribes are hereby made subject to the laws of the State of Oklahoma, providing for the partition of real estate. Any land allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at the appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition. In case of a sale under any decree, or partition, the conveyance thereunder shall operate to relieve the land described of all restrictions of every character.

CHAPTER LIII.

ACT MARCH 2, 1899.

374.—An Act to provide for the acquiring of the rights of way by railroad companies through Indian reservations, Indian lands and Indian allotments, and for other purposes. (30 Stat. 990.)

- . Railway Right of way Through Indian Lands.
- . Right of Way Not to Exceed Fifty Feet, Except.
- . Manner of Acquiring.
- . Time Limit for Commencement and Completion.
- . Annual Charge to be Fixed by Secretary.
- . Freight and Passenger Rates.
- . Section 2 of Act March 3, 1875, Made Applicable.
- . Secretary to Make Rules and Regulations.
- . Power to Repeal Reserved.

327. Railway Right of Way Through Indian Lands.—

a right of way for a railway, telegraph and telephone through any Indian reservation in any State or Territory or through any lands held by an Indian tribe or nation in Indian Territory, or through any lands reserved for Indian agency or for other purposes in connection with Indian service, or through any lands which have been ceded in severalty to any individual Indian under any treaty, but which have not been conveyed to the State with full power of alienation, is hereby granted to any railroad company organized under the laws of the United States, or of any State or Territory, which shall conform with the provisions of this Act and such rules and regulations as may be prescribed thereunder:

Provided, That no right of way shall be granted under this Act until the Secretary of the Interior is satisfied that the railroad company applying has made said application in good faith and with intent and ability to construct said road,

and in case objection to the granting of such right of way shall be made, said Secretary shall afford the parties so objecting a full opportunity to be heard:

Provided further, That where a railroad has heretofore been constructed, or is in actual course of construction, no parallel right of way within ten miles on either side shall be granted by the Secretary of the Interior unless, in his opinion, public interest will be promoted thereby.

§ 828. **Right of Way Not to Exceed Fifty Feet, Except.**—(Sec. 2.) That such right of way shall not exceed fifty feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when it shall not exceed one hundred feet in width on each side of the road, and may include ground adjacent thereto for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed one hundred feet in width by a length of two thousand feet, and not more than one station to be located within any one continuous length of ten miles of road:

Provided, That this section shall apply to all rights of way heretofore granted to railroads in the Indian Territory where no provisions defining the width of the rights of way are set out in the Act granting the same.

§ 829. **Manner of Acquiring.**—(Sec. 3.) That the line of route of said road may be surveyed and located through and across any of said lands at any time, upon permission therefor being obtained from the Secretary of the Interior; but before the grant of such right of way shall become effective a map of the survey of the line or route of said road must be filed with and approved by the Secretary of the Interior, and the company must make payment to the Secretary of the Interior for the benefit of the tribe or nation, of full compensation for such right of way, including all damage to improvements and adjacent lands,



ACT MARCH 2, 1899.

§ 829

compensation shall be determined and paid under the authority of the Secretary of the Interior, in such manner as he may prescribe. Before any such railroad shall be constructed through any land, claim, or improvement, held by any Indian or Indian occupants or allottees in pursuance of any laws of the United States, compensation shall be made to each occupant or allottee for all property to be damaged or destroyed, or damage done, by reason of the construction of the railroad. In case of failure to make amicable settlement, in case of any such occupant or allottee, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed by the Secretary of the Interior, before entering upon the duties of their appointment. They shall take and subscribe before competent authorities an oath that they will faithfully and impartially perform the duties of their appointment, which oath, duly sworn to, shall be returned with their award to the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Either party may be dissatisfied with the finding of the referees, and may appeal the right within sixty days after the making of the award, and notice of the same, to appeal, in case the appeal is in the Indian Territory, by original petition to the United States court in the Indian Territory sitting at the place nearest and most convenient to the property to be condemned; and if said land is situated in any State or Territory other than the Indian Territory, the case shall be tried in the United States district court for such State or Territory, where the case shall be tried de novo and the award or damages rendered by the court shall be final and conclusive.

Proceedings are commenced in court as aforesaid, the company shall deposit the amount of the award with the referees with the court to abide the judgment of the court. They then have the right to enter upon the property to be condemned and proceed with the construction of the railroad. Each of the referees shall receive for his

CHAPTER LIV.

ACT FEBRUARY 28, 1902.

Chap. 134.—An Act to grant the right of way to the Enid & Anadarko Railway Company, and for other purposes.

- § 836. Enid and Anadarko Railway Company Authorized to Construct Road.
- 837. Right of Way.
- 838. How Obtained.
- 839. Freight and Passenger Charges.
- 840. Compensation to Indian Tribes.
- 841. Proposed Right of Way.
- 842. Employees May Reside Upon Right of Way.
- 843. Jurisdiction of United States Court.
- 844. Rate of Construction.
- 845. Condition of Grant.
- 846. Mortgage to be Recorded—Where.
- 847. Right to Repeal Act Reserved.
- 848. Provisions of Act Applicable to Other Companies.
- 849. Right of Way.
- 850. Manner of Proceeding.
- 851. Regulation of Freight and Other Charges.
- 852. Crossing Other Railroads.
- 853. Grade Crossings.
- 854. Safety Devices.
- 855. Mortgages.
- 856. To Obtain Benefits of Act.
- 857. Act of March 2, 1899, Repealed.

§ 836. **Enid & Anadarko Railway Company Authorized to Construct Road.**—That the Enid & Anadarko Railway Company, a corporation created under and by virtue of the laws of the Territory of Oklahoma, be, and the same are hereby, invested and empowered with the right of lawfully constructing, owning, equipping, operating, using

maintaining a railway and telegraph and telephone line through the Territory of Oklahoma and the Indian Territory, beginning at a point on its railway between Anadarko and Watonga, in the Territory of Oklahoma, thence in an easterly direction by the most practicable route to a point on the eastern boundary of the Indian Territory at Fort Smith, in the State of Arkansas, together with a branch lines to be built from any point on the line so described to any other point in the Indian Territory and a railway company may at any time hereafter decide to construct, with the right to construct, use, and maintain tracks, turn-outs, sidings, and extensions as said company may deem it to its interest to construct along and in the right of way and depot grounds hereby granted.

837. Right of Way.—(Sec. 2.) That said corporation authorized to take and use for all purposes of a railway, for no other purpose, a right of way one hundred feet in width through said Oklahoma Territory and said Indian Territory, and to take and use a strip of land two hundred feet in width, with a length of two thousand feet, in addition to right of way, for stations, for every eight miles of line, with the right to use such additional ground where there are heavy cuts or fills as may be necessary for the construction and maintenance of the roadbed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be included in said cut or fill: **Provided**, That no more than said addition of land shall be taken for any one station: **Provided further**, That no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railway, telegraph and telephone lines; and when any portion thereof shall cease to be so used such portion shall revert to the nation or tribe of Indians from which the same shall have been taken.

§ 838. **How Obtained.**—(Sec. 3.) That before said railway shall be constructed through any lands held by individual occupants according to the laws, customs, and usages of any of the Indian nations or tribes through which it may be constructed, full compensation shall be made to such occupants for all property to be taken or damage done by reason of the construction of such railway. In case of failure to make amicable settlement with any occupant, such compensation shall be determined by the appraisement of three disinterested referees, to be appointed, one (who shall act as chairman) by the Secretary of the Interior, one by the chief of the nation to which said occupant belongs, and one by said railway company, who, before entering upon the duties of their appointment, shall take and subscribe, before a district judge, clerk of a district court, or United States commissioner, an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to and filed with the Secretary of the Interior within sixty days from the completion thereof; and a majority of said referees shall be competent to act in case of the absence of a member, after due notice. And upon the failure of either party to make such appointment within thirty days after the appointment made by the Secretary of the Interior, the vacancy shall be filled by a judge of the United States court for the Indian Territory upon the application of the other party. The chairman of said board shall appoint the time and place for all hearings within the nation to which such occupant belongs. Each of said referees shall receive for his services the sum of four dollars per day for each day they are engaged in the trial of any case submitted to them under this Act, with mileage at five cents per mile. Witnesses shall receive the usual fees allowed by the courts of said nations. Cost, including compensation of the referees, shall be made a part of the award, and be paid by such railway company. In case the referees cannot agree, then any two of them are authorized

make the award. Either party being dissatisfied with the finding of the referees shall have the right, within ninety days after the making of the award and notice of the same, to appeal by original petition to the United States court for the Indian Territory, which court shall have jurisdiction to hear and determine the subject-matter of said petition, according to the laws of the Territory in which the same shall be heard provided for determining the damage when property is taken for railroad purposes. If upon the hearing of said appeal the judgment of the court shall be for a larger sum than the award of the referees, the cost of said appeal shall be adjudged against the railway company. If the judgment of the court shall be for the same sum as the award of the referees, then the costs shall be judged against the appellant. If the judgment of the court shall be for a smaller sum than the award of the referees, then the costs shall be adjudged against the party claiming damages. When proceedings have been commenced in court, the railway company shall pay double the amount of the award into court to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway.

§ 839. Freight and Passenger Charges.—(Sec. 4.) That no railway company shall not charge the inhabitants of said Territory a greater rate of freight than the rate authorized by the laws of the Territory of Oklahoma for services or transportation of the same kind: **Provided,** That messenger rates on said railway shall not exceed three cents per mile. Congress hereby reserves the right to regulate the charges for freight and passengers on said railway and messages on said telegraph and telephone lines until a State government or governments shall exist in said Territory within the limits of which said railway, or a part thereof, shall be located; and then such State government or governments shall be authorized to fix and regulate the cost

of transportation of persons and freight within their respective limits by said railway; but Congress expressly reserves the right to fix and regulate at all times the cost of such transportation by said railway or said company whenever such transportation shall extend from one State into another, or shall extend into more than one State: **Provided, however,** That the rate of such transportation of passengers, local or interstate, shall not exceed the rate above expressed: **And provided further,** That said railway company shall carry the mail at such prices as Congress may by law provide; and until such rate is fixed by law the Postmaster General may fix the rate of compensation.

§ 840. **Compensation to Indian Tribes.** (Sec. 5.) That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands said main line and branches may be located, the sum of fifty dollars, in addition to compensation provided for in this Act for property taken and damages done to individual occupants by the construction of the railway, for each mile of railway that it may construct in said Territory, said payments to be made in installments of five hundred dollars as each ten miles of road is graded: **Provided,** That if the general council of said nations or tribes through whose lands said railway may be located or the principal executive officer of the tribe if the general council be not in session shall, within four months after the filing of maps of definite location, as set forth in section six of this Act, dissent from the allowances provided for in this section, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this Act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: **Provided further,** That the

nt awarded or adjudged to be paid by said railway any for said dissenting nation or tribe shall be in lieu e compensation that said nation or tribe would be en- to receive under the foregoing provisions. Said com- shall also pay, so long as said Territory is owned and ied by the Indians in their tribal relations, to the Sec- y of the Interior the sum of fifteen dollars per annum ach mile of railway it shall construct in said Territory. money paid to the Secretary of the Interior under the isions of this Act shall be apportioned by him in ac- uance with the laws and treaties now in force between United States and said nations or tribes, according e number of miles of railway that may be constructed id railway company through their lands: **Provided,** Congress shall have the right, so long as said lands ccupied and possessed by said nation or tribe, to im- such additional taxes upon said railway as it may deem and proper for their benefit; and any Territory or hereafter formed through which said railway shall been established may exercise the like power as to part of said railway as may lie within its limits. Said ay company shall have the right to survey and locate ilway immediately after the passage of this Act.

41. **Proposed Right of Way.**—(Sec. 6.) That said any shall cause maps, showing the route of its located hrough said Territory, to be filed in the office of the tary of the Interior, and also to be filed in the office e principal chief of each of the nations or tribes gh whose lands said railway may be located, and after iling of said maps no claim for a subsequent settle- and improvement upon the right of way shown by maps shall be valid as against said company: **Pro-** That when a map showing any portion of said rail- ompany's located line is filed as herein provided for, ompany shall commence grading said located line six months thereafter, or such location shall be void;



§ 844

LANDS OF THE FIVE CIVILIZED TRIBES.

and said location shall be approved by the Secretary of the Interior in sections of twenty-five miles before location of any such section shall be begun.

§ 842. **Employees May Reside Upon Right of** (Sec. 7.) That the officers, servants, and employee company necessary to the construction and management of said road shall be allowed to reside, while so engaged in such right of way, but subject to the provisions of Indian intercourse laws, and such rules and regulations may be established by the Secretary of the Interior in accordance with said intercourse laws.

§ 843. **Jurisdiction of United States Court.**—(That the United States court for the Indian Territory, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, full and complete jurisdiction over all controversies arising within the said Enid & Anadarko Railway Company and the Indian Territory and tribe through whose territory said railway shall be constructed. Said courts shall have like jurisdiction over all controversies arising between the inhabitants of the Indian Territory or tribe and said railway company; and the jurisdiction of said courts is hereby extended within the limits of said Indian Territory, without distinction as to the citizenship of the parties, so far as may be necessary to carry into effect the provisions of this Act.

§ 844. **Rate of Construction.**—(Sec. 9.) That said railway company shall build at least one-tenth of its road in said Territory within one year after the passage of this Act, and complete its road within three years after the approval of its map of location by the Secretary of the Interior or the rights herein granted shall be forfeited to that portion not built; that said railway company shall construct and maintain continually all road and bridges.



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s and necessary bridges over said railway wherever
ads and highways do now or may hereafter cross
lway's right of way, or may be by the proper au-
laid out across the same.

Condition of Grant.—(Sec. 10.) That the said
Anadarko Railway Company shall accept this right
upon the express condition, binding upon itself, its
rs, and assigns, that they will neither aid, advise,
st in any effort looking toward the changing or ex-
ing the present tenure of the Indians in their land,
not attempt to secure from the Indian Nation any
grant of land, or its occupancy, than is hereinbe-
vided: **Provided,** That any violation of the condi-
ntioned in this section shall operate as a forfeiture
he rights and privileges of said railway company
his Act.

Mortgages to Be Recorded—Where.—(Sec. 11.)
mortgages executed by said railway company con-
any portion of its railway, with its franchises, that
constructed in said Indian Territory, shall be re-
in the Department of the Interior, and the record
shall be evidence and notice of their execution, and
onvey all rights, franchises, and property of said
y as therein expressed.

Right to Appeal Act Reserved.—(Sec. 12.) That
s may at any time amend, add to, alter, or repeal
; and the right of way herein and hereby granted
t be assigned or transferred in any form whatever
the construction and completion of the road, ex-
to mortgages or other liens that may be given or
thereon to aid in the construction thereof..

Provisions of Act Applicable to Other Company.
13.) That the right to locate, construct, own, equip,

operate, use, and maintain a railway and telegraph and telephone line or lines into, in, or through the Indian Territory, together with the right to take and condemn lands for right of way, depot grounds, terminals, and other railway purposes, in or through any lands held by any Indian tribe or nation, person, individual, or municipality in said Territory, or in or through any lands in said Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any railway company organized under the laws of the United States, or of any State or Territory, which shall comply with this Act.

§ 849. **Right of Way.**—(Sec. 14.) That the right of way of any railway company shall not exceed one hundred feet in width except where there are heavy cuts and fills, when one hundred feet additional may be taken on each side of said right of way; but lands additional and adjacent to said right of way may be taken and condemned by any railway company for station grounds, buildings, depots, side tracks, turnouts, or other railroad purposes not exceeding two hundred feet in width by a length of two thousand feet. That additional lands not exceeding forty acres at any one place may be taken by any railway company when necessary for yards, roundhouses, turntables, machine shops, water stations, and other railroad purposes. And when necessary for a good and sufficient water supply in the operation of any railroad, any such railway company shall have the right to take and condemn additional lands for reservoirs for water stations, and for such purpose shall have the right to impound surface water or build dams across any creek, draw, canyon, or stream, and shall have the right to connect the same by pipe line with the railroad and take the necessary grounds for such purposes; and any railway company shall have the right to change or straighten

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its line, reduce its grades or curves, and locate new stations and to take the lands and right of way necessary therefor under the provisions of this Act.

§ 850. **Manner of Proceeding.**—(Sec. 15.) That before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section, full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated: **Provided,** That correct maps of the said line of railroad in sections of twenty-five miles each and of any lands taken under this Act, shall be filed in the Department of the Interior, and shall also be filed with the United States Indian agent for Indian Territory, and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.

In case of the failure of any railway company to make amicable settlement with any individual owner, occupant, allottee, tribe, or nation for any right of way or lands or improvements sought to be appropriated or condemned under this Act, all compensation and damages to be paid to the dissenting individual owner, occupant, allottee, tribe or nation by reason of the appropriation and condemnation of said right of way, lands, or improvements shall be determined by the appraisement of three disinterested referees, to be appointed by the judge of the United States court, or other court of jurisdiction in the district where such lands are situated, on application of the corporation or other person or party in interest. Such referees, before entering upon the duties of their appointment, shall each take and subscribe, before competent authority, an oath that he will faithfully and impartially discharge the duties of his appointment, which oaths, duly certified, shall be re-

turned with the award of the referees to the clerk of the court by which they were appointed. The referees shall also find in their report the names of the person and persons, tribe, or nation to whom the damages are payable and the interest of each person, tribe, or nation in the award of damages. Before such referees shall proceed with the assessment of damages for any right of way or other lands condemned under this act, twenty days' notice of the time when the same shall be condemned shall be given to all persons interested, by publication in some newspaper in general circulation nearest said property in the district where said right of way or said lands are situated, or by ten days' personal notice to each person owning or having any interest in said lands or right of way: **Provided**, That such notice to any tribe or nation may be served on the principal chief or governor of the tribe. If the referees cannot agree, then any two of them are authorized to and shall make the award. Any party to the proceedings who is dissatisfied with the award of the referees shall have the right, within ten days after the making of the award, to appeal, by original petition, to the United States court, or other court of competent jurisdiction, sitting at the place nearest and most convenient to the property sought to be taken, where the question of the damages occasioned by the taking of the lands in controversy shall be tried de novo, and the judgment rendered by the court shall be final and conclusive, subject, however, to appeal as in other cases.

When the award of damages is filed with the clerk of the court by the referees, the railway company shall deposit the amount of such award with the clerk of the court, to abide the judgment thereof, and shall then have the right to enter upon and take possession of the property sought to be condemned: **Provided**, That when the said railway company is not satisfied with the award, it shall have the right, before commencing construction, to abandon any portion of said right of way and adopt a new loc-

, subject, however, as to such new location, to all the visions of this Act. Each of the referees shall receive his compensation the sum of four dollars per day while ually engaged in the appraisement of the property and hearing of any matter submitted to them under this t. Witnesses shall receive the fees and mileage allowed law to witness in courts of record within the districts ere such lands are located. Costs, including compensa- n of the referees, shall be made part of the award or lgment and be paid by the railway company: **Provided**, at if any party or person other than the railway com- y shall appeal from any award, and the judgment of court does not award such appealing party or person e than the referees awarded, all cost occasioned by such eal shall be paid by such appealing party or person.

851. Regulation of Freight and Other Charges.—(Sec.

That where a railroad is constructed under the pro- ons of this Act there shall be paid by the railway com- y to the Secretary of the Interior, for the benefit of particular tribe or nation through whose lands any a railroad may be constructed, an annual charge of fif- a dollars per mile for each mile of road constructed, the e to be paid so long as said lands shall be owned and upied by such nation or tribe, which payment shall be addition to the compensation otherwise provided herein; . the grants herein are made upon the condition that agress hereby reserves the right to regulate the charges freight and passengers on said railways and messages all telegraph and telephone lines until a State govern- nt or governments shall exist in said Territory within limits of which any railway shall be located; and then a State government or governments shall be authorized fix and regulate the cost of transportation of persons freights within their respective limits by such rail- ; but Congress expressly reserves the right to fix and

regulate at all times the cost of such transportation of mail on said railways whenever such transportation shall extend from one State into another, or shall extend into more than one State; and that the railway companies shall carry the mail at such prices as Congress may by law provide; and until such rate is fixed by law the Postmaster General may fix the rate of compensation.

§ 852. **Crossing Other Railroads.**—(Sec. 17.) That any railway company authorized to construct, own, or operate a railroad in said Territory desiring to cross or unite its tracks with any other railroad upon the grounds of such other railway company shall, after fifteen days' notice in writing to such other railroad company, make application in writing to the judge of the United States court for the district in which it is proposed to make such crossing or connection for the appointment of three disinterested referees to determine the necessity, place, manner, and time of such crossing or connection. The provisions of section three of this act with respect to the condemnation of right of way through tribal or individual lands shall, except as in this section otherwise provided, apply to proceedings to acquire the right to cross or connect with another railroad. Upon the hearing of any such application to cross or connect with any other railroad, either party or the referees may call and examine witnesses in regard to the matter, and said referees shall have the same power to administer oaths to witnesses that is now possessed by United States commissioners in said Territory, and said referees shall, after such hearing and a personal examination of the locality where a crossing or connection is desired, determine whether there is a necessity for such crossing or not, and if so, the place thereof, whether it shall be over or under the existing railroad, or at grade, and in other respects the manner of such crossing and the terms upon which the same shall be made and maintained: **Provided, That**

ing shall be made through the yards or over the
 hes or side tracks of any existing railroad if a cross-
 an be effected at any other place that is practicable.
 her party shall be dissatisfied with the terms of the
 made by said referees it may appeal to the United
 s court of the Indian Territory for the district wherein
 crossing or connection is sought to be made in the
 manner as appeals are allowed from a judgment of a
 d States commissioner to said court, and said appeal
 ll subsequent proceedings shall only affect the amount
 mpensation, if any, and other terms of crossing fixed
 id referees, but shall not delay the making of said
 ing or connection: **Provided**, That the corporation
 ing such crossing or connection shall deposit with the
 of the court the amount of compensation, if any is
 by said referees, and shall execute and file with said
 a bond of sufficient security, to be approved by the
 or a judge thereof in vacation, to pay all damages
 omply with all terms that may be adjudged by the
 . Any railway company which shall violate or evade
 of the provisions of this section shall forfeit for every
 offense, to the person, company, or corporation in-
 thereby, three times the actual damages sustained by
 arty aggrieved.

53. **Grade Crossings.**—(Sec. 18.) That when in any
 two or more railroads crossing each other at a com-
 grade shall, by a system of interlocking or automatic
 ls, or by any works or fixtures to be erected by them,
 r it safe for engines and trains to pass over such
 ngs without stopping, and such interlocking or auto-
 signals or works or fixtures shall be approved by the
 state Commerce Commissioners, then, in that case, it
 eby made lawful for the engines and trains of such
 ad or railroads to pass over such crossing without stop-
 any law or the provisions of any law to the contrary

notwithstanding; and when two or more railroads cross each other at a common grade, either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper to grant such permission.

§ 854. **Safety Devices.**—(Sec. 19.) That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signals or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving such notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

§ 855. **Mortgages.**—(Sec. 20.) That all mortgages executed by any railway company conveying any portion of its railway, with its franchises, that may be constructed in said Indian Territory, shall be recorded in the Department of the Interior, and the record thereof shall be evidence and notice of their execution, and shall convey all rights.

es, and property of said company as therein ex-

21.) That Congress hereby reserves the right at
e to alter, amend, or repeal this Act, or any portion

To Obtain Benefits of Act.—(Sec. 22.) That any
company which has heretofore acquired, or may
r acquire, under any other Act of Congress, a rail-
ht of way in Indian Territory may, in the manner
rescribed, obtain any or all of the benefits and ad-
s of this Act, and in such event shall become sub-
all the requirements and responsibilities imposed by
upon railroad companies acquiring a right of way
er. And where the time for the completion of a
in Indian Territory under any Act granting a
way therefor has expired, or shall hereafter ex-
advance of the construction of such railroad, or of
t thereof, the Secretary of the Interior may, upon
use shown, extend the time for the completion of
lroad, or of any part thereof, for a time not ex-
two years from the date of such extension.

Act of March 2nd, 1899, Repealed.—(Sec. 23.)
Act entitled "An Act to provide for the acquiring
s of way by railroad companies through Indian
ions, Indian lands, and Indian allotments, and for
rposes," approved March second, eighteen hundred
ty-nine, so far as it applies to the Indian Territory
ahoma Territory, and all other Acts or parts of
onsistent with this Act are hereby repealed: **Pro-**
hat such repeal shall not affect any railroad com-
ose railroad is now actually being constructed, or
ts which have already accrued; but such railroads
completed and such rights enforced in the manner
by the laws under which such construction was



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LANDS OF THE FIVE CIVILIZED TRIBES.

commenced or under which such rights accrued: And provided further, That the provisions of this Act shall apply also to the Osages' Reservation and other Indian reservations and allotted Indian lands in the Territory of Oklahoma, and all judicial proceedings herein authorized may be commenced and prosecuted in the courts of said Oklahoma Territory which may now or hereafter exercise jurisdiction within said reservations or allotted lands.

Approved, February 28, 1902.

CHAPTER LV.


ACT MARCH 11, 1904.

ap. 505.—An Act authorizing the Secretary of the Interior to grant right of way for pipe lines through Indian lands.

58. Right of Way for Pipe Lines Through Indian Lands.

§ 858. Right of Way for Pipe Lines Through Indian Territory.—That the Secretary of the Interior is hereby authorized and empowered to grant a right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the Indian Territory, through any lands reserved for an Indian agency or Indian school, for other purposes in connection with the Indian service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions hereinafter expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of definite location of said lines approved by, the Secretary of the Interior: **Provided,** That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location.

cation, when the consent of the allottee upon whose oil or gas wells may be located and of all other allottees through whose lands said lateral pipe lines may pass have been obtained by the pipe line company: **Provided further,** That in case it is desired to run a pipe line under or across the line of any railroad, and satisfactory arrangements can be made with the railroad company, then the question shall be referred to the Secretary of the Interior, who shall prescribe the terms and conditions under which the pipe line company shall be permitted to lay its lines under or across the railroad. The compensation to be paid the tribes in tribal capacity and the individual allottees for such use of way through their lands shall be determined in the same manner as the Secretary of the Interior may direct, and shall be subject to his final approval. And where such lines are not subject to State or Territorial taxation the pipe line company or owner of the line shall pay to the Secretary of the Interior, for the use and benefit of the Indians, such annual tax as he may designate, not exceeding five dollars for each ten miles of line so constructed and maintained, and such rules and regulations as said Secretary may prescribe. But nothing herein contained shall be so construed as to exempt the owners of such lines from the payment of any tax that may be lawfully assessed against them by the State, Territorial, or municipal authority. And incorporated cities and towns into and through which such lines may be constructed shall have the power to regulate the manner of construction therein, and nothing herein contained shall be so construed as to deny the right of municipal taxation in such towns and cities, and nothing herein shall authorize the use of such right of way except for pipe line, and then only so far as may be necessary for its construction, maintenance, and care: **Provided,** the rights herein granted shall not extend beyond a period of twenty years: **Provided further,** That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed



ACT MARCH 11, 1904.

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**er this act for another period not to exceed twenty years
rom the expiration of the first right, upon such terms and
onditions as he may deem proper.**

**(Sec. 2.) The right to alter, amend, or repeal this act is
expressly reserved.**

Approved, March 11, 1904.

CHAPTER LVI.

CONVEYANCES OF REAL ESTATE.

Chap. 27.—Mansfield's Digest, put in force in Indian Territory by Act February 19, 1903.

- § 859. Lands May be Aliened by Deed—Words "Grant, Buy and Sell" Equivalent to Express Warranty.**
- 860. Breaches May be Assigned as Upon Express Covenant.**
- 861. Conveyance in Fee Simple.**
- 862. Subsequently Acquired Title by Grantor Inures to Benefit of Grantee.**
- 863. A Fee Tail, An Estate for Life.**
- 864. One May Convey, Notwithstanding Adverse Possession.**
- 865. The Term "Real Estate" Defined.**
- 866. Wills Not Embraced by This Act.**
- 867. Grant of Land to Two or More Constitutes Them Tenants in Common.**
- 868. Married Woman May Convey Her Real Estate, How.**
- 869. May Relinquish Her Dower, How.**
- 870. Witnesses to Conveyance.**
- 871. Proof or Acknowledgment of Deed.**
- 872. Acknowledgment to be Attested, How.**
- 873. Same.**
- 874. Certificate of.**
- 875. Proof of Identity of Grantor or Witness.**
- 876. Acknowledgment by Grantor.**
- 877. Proof of.**
- 878. How Proved When Witness is Dead.**
- 879. Married Women, Conveyance and Relinquishment of Dower by.**
- 880. To be Proved or Acknowledged Before Recorded.**
- 881. Power of Attorney, Requisites of.**
- 882. Same.**
- 883. Revocation of.**
- 884. Deeds Proved or Acknowledged to be Recorded and May be Read in Evidence.**
- 885. Deeds Lost, Record or Transcript Thereof Evidence.**
- 886. Not Conclusive.**
- 887. Commissioner of State Lands, How Deeds Executed Without Acknowledgment Required.**

- § 88. Administrator, etc., Deed by; Effect of; Copy, Evidence.
- § 89. Same.
- § 90. Filing for Record Constructive Notice—Duty of Recorder.
- § 91. Of No Validity Against Subsequent Purchasers, etc., Without Notice, Unless.
- § 92. This Act Not to Apply to Mortgages.

§ 859. **Lands May Be Aliened By Deed—Words Grant, Bargain and Sell**—Equivalent to Express Warranty.—(Sec. 639.) All lands, tenements and hereditaments may be aliened and possession thereof transferred by deed without livery of seizin, and the words “grant, bargain and sell” shall be an express covenant to the grantee, his heirs and assigns, that the grantor is seized of an indefeasible estate in fee simple, free from incumbrance done or suffered by the grantor, except rents or services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and against the claim or demand of all other persons whatsoever, unless limited by express words in such deed.

§ 860. **Breaches May Be Assigned As Upon Express Covenant**.—(Sec. 640.) The grantee, his heirs or assigns, may in any action assign breaches as if such covenants were expressly inserted.

§ 861. **Conveyance in Fee Simple**.—(Sec. 641.) The term or word “heirs,” or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; but all deeds shall be construed to convey a complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed.

§ 862. **Subsequently Acquired Title By Grantor Inures to Benefit of Grantee**.—(Sec. 642.) If any person shall convey any real estate by deed, purporting to convey the same in fee simple absolute, or any less estate, and shall not at the time of such conveyance have the legal estate in such

lands, but shall afterward acquire the same, the legal or equitable estate afterward acquired shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal or equitable estate had been in the grantor at the time of the conveyance.

§ 863. **A Fee Tail An Estate for Life.**—(Sec. 643.) In cases when by common law any person may hereafter become seized in fee tail of any lands or tenements, by virtue of any devise, gift, grant or other conveyance, such person instead of being or becoming seized thereof in fee tail, shall be adjudged to be and become seized thereof for his natural life only, and the remainder shall pass in fee simple absolute to the person to whom the estate tail would first pass according to the course of the common law by virtue of such devise, gift, grant or conveyance.

§ 864. **One May Convey Notwithstanding Adverse Possession.**—(Sec. 644.) Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest in the same manner and with like effect as if he was in the actual possession thereof.

§ 865. **The Term "Real Estate" Defined.**—(Sec. 645.) The term "real estate," as used in this act, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real.

§ 866. **Wills Not Embraced By This Act.**—(Sec. 646.) This act shall not be construed so as to embrace last wills and testaments.

§ 867. **Grant of Land to Two or More Constitutes Tenants in Common.**—(Sec. 647.) Every interest in real estate, granted or devised to two or more persons, other



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ecutors and trustees as such, shall be in tenancy in
i, unless expressly declared in such grant or devise
joint tenancy.

. **Married Woman May Convey Her Real Estate,**
(Sec. 648.) A married woman may convey her real
r any part thereof by deed of conveyance, executed
elf and her husband, and acknowledged and certi-
the manner hereinafter prescribed.

. **May Relinquish Her Dower—How.**—(Sec. 649.)
ied woman may relinquish her dower in any of the
ate of her husband by joining with him in a deed of
nce thereof, and acknowledging the same in the
hereinafter prescribed.

. **Witnesses to Conveyance.**—(Sec. 650.) Deeds
truments of writing for the conveyance of real es-
ill be executed in the presence of two disinterested
es, or, in default thereof, shall be acknowledged by
itor in the presence of two such witnesses, who shall
bscribe such deed or instrument in writing for the
nce of such real estate; and when the witnesses do
scribe the deed or instrument of writing aforesaid
ime of the execution thereof, the date of their sub-
; the same shall be stated with their signatures.

. **Proof or Acknowledgment of Deed.**—(Sec. 651.)
of or acknowledgment of every deed or instrument
ing for the conveyance of any real estate, shall be
y some one of the following courts or officers:

When acknowledged or proven within this state
he supreme court, the circuit court, or either of the
thereof, or the clerk of any court of record, or be-
justice of the peace or notary public.

d. When acknowledged or proven without this

state and within the United States or their territory before any court of the United States or of any state or territory, having a seal, or the clerk of any such court, or before any notary public, or before the mayor of any town, or the chief officer of any city or town having a seal, or before a commissioner appointed by the governor of this state.

Third. When acknowledged or proven without the United States, before any court of any state, kingdom or empire, having a seal, or any mayor or chief officer of any town having an official seal, or before any officer of a foreign country who, by the laws of such country, is authorized to take probate of the conveyance of real estate in his own country, if such officer has, by law, an official seal.

§ 872. **Acknowledgment to Be Attested—How.**—(Sec. 652.) In cases of acknowledgment or proof of deeds or conveyances of real estate, taken within the United States or territories thereof, when taken before any court or officer having a seal of office, such deed or conveyance shall be attested under such seal of office; and if such officer has no seal of office, then under the official signature of such officer.

§ 873. **Same.**—(Sec. 653.) In all cases of deed or conveyances proven or acknowledged without the United States or their territories, such acknowledgment or proof must be attested under the official seal of the court or officer before whom such probate is had.

§ 874. **Certificate of.**—(Sec. 654.) Every court or officer that shall take the proof or acknowledgment of a deed or conveyance of real estate, or the relinquishment of dower of any married woman in any conveyance of real estate of her husband, shall grant a certificate of such fact and cause such certificate to be indorsed on said deed.

ment, conveyance or relinquishment of dower, which certificate shall be signed by the clerk of the court where the same is taken in court, or by the officer before whom the same is taken and sealed, if he have a seal of office.

375. Proof of Identity of Grantor or Witness.—(Sec.

When any grantor in any deed or instrument that conveys real estate, or whereby any real estate may be affected in law or equity, or any witness to any like instrument, shall present himself before any court, or other officer for the purpose of acknowledging or proving the execution of such deed or instrument as aforesaid, if such grantor or witness shall be personally unknown to such court or officer, his identity and his being the person he purports to be on the face of such instrument of writing, shall be proved to such court or officer, which proof may be made by witnesses known to the court or officer, or the affidavit of such grantor or witness, if such court or officer shall be satisfied therewith; which proof or affidavit shall also be entered on such deed or instrument of writing.

376. Acknowledgment By Grantor.—(Sec. 656.) The acknowledgment of deeds and instruments of writing for the conveyance of real estate, or whereby such real estate may be affected in law or equity, shall be by the grantor appearing in person before such court or officer having the authority by law to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein mentioned and set forth.

377. Proof of.—(Sec. 657.) When any such deed or instrument is to be proven, it shall be done by one or more subscribing witnesses personally appearing before the proper court or officer, and stating on oath that he or she saw the grantor subscribe such deed or instrument of writing, or that the grantor acknowledged in his or their

presence that he had subscribed and executed such deed or instrument for the purposes and consideration therein mentioned, and that he or they had subscribed the same in the presence of witnesses at the request of the grantor.

§ 878. **How Proved When Witness Is Dead.**—(Sec. 658.) If any grantor has not acknowledged the execution of any such deed or instrument, and the subscribing witnesses be dead or cannot be had, it may be proved by the evidence of the handwriting of the grantor, and of at least one of the subscribing witnesses, which evidence shall consist of the deposition of two or more disinterested persons swearing to each signature.

§ 879. **Married Woman Conveyance and Relinquishment of Dower By.**—(Sec. 659.) The conveyance of any real estate by any married woman, or the relinquishment of dower in any of her husband's real estate, shall be authenticated and the title passed, by such married woman voluntarily appearing before the proper court or officer, and in the absence of her husband declaring that she had of her own free will executed the deed or instrument in question, or that she had signed the relinquishment of dower for the purposes therein contained, and set forth without compulsion or undue influence of her husband.

§ 880. **To Be Proved Or Acknowledged Before Recorded.**—(Sec. 660.) All deeds and other instruments in writing for the conveyance of any real estate, or by which any real estate may be affected in law or equity, shall be proven or duly acknowledged in conformity with the provisions of this act before they or any of them shall be admitted to record.

§ 881. **Powers of Attorney—Requisites of.**—(Sec. 661.) Every letter of attorney containing a power to convey any

estate as agent or attorney for the owner thereof, or
ite as agent or attorney for another any deed or in-
nent in writing that shall convey any real estate, or
eby any real estate shall be affected in law or equity,
be acknowledged or proven and certified and recorded
any deed that such agent or attorney shall make in
e of such letter of attorney.

382. **Same.**—(Sec. 662.) Letters of attorney shall be
en or acknowledged before the same courts or officers
are authorized by this act to take probate of deeds
eying real estate.

383. **Revocation of:**—(Sec. 663.) No letter of attor-
duly acknowledged or proved, and certified as pre-
ed by this act, shall be revoked but by the maker of
letter of attorney or his legal representatives, which
ation shall be in writing, acknowledged or proved be-
the proper court or officer, and filed for record in the
ty or counties where such letter of attorney was in-
ed to operate—all such letters of attorney shall be re-
d and deemed void from the time of filing such revo-
ns for record.

384. **Deeds Proved Or Acknowledged to Be Recorded
Then May Be Read in Evidence.**—(Sec. 664.) Every
or instrument in writing conveying or affecting real
e which shall be acknowledged or proved and certi-
as prescribed by this act, may, together with the cer-
te of acknowledgment, proof, or relinquishment of
r, be recorded by the recorder of the county where
land to be conveyed or affected thereby shall be situate
when so recorded may be read in evidence without
er proof of execution.

385. **Deeds Lost, Record Or Transcript Thereof Evi-**
a.—(Sec. 665.) If it shall appear at any time that any

deed or instrument, duly acknowledged or proved and recorded as prescribed by this act, is lost or not within the power and control of the party wishing to use the same, the record thereof, or a transcript of such record certified by the recorder, may be read in evidence without further proof of execution.

§ 886. **Not Conclusive.**—(Sec. 666.) Neither the certificate of acknowledgment nor probate of any such deed or instrument, nor the record or transcript thereof, shall be conclusive, but may be rebutted.

§ 887. **Commissioner of State Lands—How Deeds Executed By—No Acknowledgment Required.**—(Sec. 667.) Where, by law, the commissioner of state lands is required to execute any deed of conveyance or patent for any lands sold or granted by the state, such deed of conveyance or patent, when executed by such commissioner under his official seal, shall convey all the right and title of the state in and to said lands to the purchaser, and may be recorded in the office of the recorder of the proper county, and the original, or a duly certified copy of the same, taken from the record thereof, shall have the same effect as evidence as if such deed or patent had been acknowledged and recorded under the existing laws of this state.

§ 888. **Administrators, Etc.—Deeds By—Affect of—Copy Evidence.**—(Sec. 668.) All deeds of conveyance made by administrators, executors, guardians and commissioners in chancery, and deeds made and executed by sheriffs of real estate sold under executions, duly made and executed, acknowledged and recorded, as required by law, and purporting to convey real estate, shall vest in the grantee, his heirs and assigns, a good and valid title, both in law and in equity, and shall be evidence of the facts therein recited, and of the legality and regularity of the sale of the land so conveyed until the contrary be made to appear.

§ 889. **Same.**—(Sec. 669.) Every deed so made, executed, acknowledged and recorded, or a certified copy thereof, under the seal of the recorder of the proper county, shall be received in evidence without further proof of its execution.

§ 890. **Filing for Record Constructive Notice—Duty of Recorder.**—(Sec. 670.) Every deed, bond, or instrument of writing, affecting the title in law or equity to any property, real or personal, within this state, which is or may be required by law to be acknowledged, or proved and recorded, shall be constructive notice to all persons from the time the same is filed for record in the office of the recorder of the proper county; and it shall be the duty of such recorder to indorse, on every such deed, bond, or instrument, the precise time when the same is filed for record in his office.

§ 891. **Of No Validity Against Subsequent Purchasers, Etc., With Notice, Unless.**—(Sec. 671.) No deed, bond, or instrument of writing, for the conveyance of any real estate, or by which the title thereto may be affected in law or equity, hereafter made or executed, shall be good or valid against a subsequent purchaser of such real estate for a valuable consideration, without actual notice thereof; or against any creditor of the person executing such deed, bond, or instrument, obtaining a judgment or decree, which by law may be a lien upon such real estate, unless such deed, bond, or instrument, duly executed and acknowledged or approved, as is or may be required by law, shall be filed for record in the office of the clerk and ex officio recorder of the county where such real estate may be situated.

§ 892. **This Act Not to Apply to Mortgages.**—(Sec. 672.) Nothing herein contained shall be construed to change, or in any manner affect, sections 4742, 4743 and 4744. Act Dec. 19, 1846.

CHAPTER LVII.

DESCENT AND DISTRIBUTION.

Chap. 49.—Mansfield's Digest of the Statutes of Arkansas put in force in the Indian Territory by the Act of May 2, 1890.

- § 893. General Law of Descent.
- 894. Posthumous Children, How to Inherit.
- 895. Illegitimate Children to Inherit and Transmit on Part of Mother.
- 896. How Legitimized by Subsequent Intermarriage.
- 897. Issues of Marriage Null in Law, or Dissolved by Divorce, Legitimate.
- 898. No Bar That Ancestor Was Alien.
- 899. No Kindred to Inherit, Whole to Go to Wife or Husband; No Wife or Husband, Estate to Escheat.
- 900. Some Children Living and Some Dead, to Take Per Stirpes.
- 901. This Rule to Apply in Every Case Where Those Entitled to Inherit Are in Equal Degree of Consanguinity to Intestate.
- 902. If There be No Children, Rule of Descent.
- 903. Estate How to Go, Where No Father or Mother.
- 904. Those of Half-blood, How to Inherit.
- 905. In Cases Not Provided for, Descent According to Common Law.
- 906. All Who Inherit to do so as Tenants in Common.
- 907. By Settlement of Portion to Child, How Reckoned—Effect of.
- 908. When Not Equal to Share of Estate.
- 909. Value of Such Advancement, How Ascertained.
- 910. Maintenance, etc., Not to be Taken as Advancement.
- 911. Construction of Term "Real Estate."
- 912. Construction of Term "Inheritance."
- 913. Where Person Described as "Living."
- 914. Expression "Come on Part of Father," or "On Part of Mother."
- 915. Heir at Law May be Made by Declaration in Writing.
- 916. Declaration Must be Recorded Before of Effect.

§ 893. General Law of Descent.—(Sec. 2522.) When any person shall die, having title to any real estate of in-

ce, or personal estate, not disposed of, nor other-
nited by marriage settlement, and shall be intestate
uch estate, it shall descend^o and be distributed, in
ry, to his kindred, male and female, subject to the
t of his debts and the widow's dower, in the fol-
manner:

To children, or their descendants, in equal parts.

nd. If there be no children, then to the father, then
mother; if no mother, then to the brothers and sis-
their descendants, in equal parts.

l. If there be no children, nor their descendants,
mother, brothers or sisters, nor their descendants,
the grandfather, grandmother, uncles and aunts and
escendants, in equal parts, and so on in other cases,
end, passing to the nearest lineal ancestor, and
ildren and their descendants in equal parts.

. **Posthumous Children—How to Inherit.**—(Sec.

Posthumous children of the intestate shall inherit
manner as if born in the life-time of the intestate,
right of inheritance shall accrue to any person other
e children of the intestate, unless they be born at
e of the intestate's death.

i. **Illegitimate Children to Inherit and Transmit on
Mother.**—(Sec. 2524.) Illegitimate children shall
able of inheriting and transmitting an inheritance,
part of their mother, in like manner as if they had
gitimate of their mother.

i. **How Legitimized By Subsequent Intermarriage.**

2525.) If a man have by a woman a child or chil-
nd afterward shall intermarry with her, and shall
ze such children to be his, they shall be deemed and
red as legitimate.

§ 897. **Issue of Marriages Null in Law Or Dissolved By Divorce Legitimate.**—(Sec. 2526.) The issue of all marriages deemed null in law, or dissolved by divorce, shall be deemed and considered as legitimate.

§ 898. **No Bar That Ancestor Was Alien.**—(Sec. 2527.) In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is, or has been, an alien.

§ 899. **No Kindred to Inherit—Whole to Go to Wife or Husband—No Wife or Husband Estate to Escheat.**—(Sec. 2528.) If there be no children, or their descendants, father, mother, nor their descendants, or any paternal or maternal kindred capable of inheriting, the whole shall go to the wife or husband of the intestate. If there be no such wife or husband, then the estate shall go to the state.

§ 900. **Some Children Living and Some Dead, to Take Per Stirpes.**—(Sec. 2529.) If any of the children of an intestate be living, and some be dead, the inheritance shall descend to the children who are living, and to the descendants of such children as shall have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who shall have died leaving issue had been living, so that the descendants of each child who shall be dead shall inherit the same their parent would have received if living.

§ 901. **This Rule to Apply in Every Case Where Those Entitled to Inherit Are in Equal Degree of Consanguinity to Intestate.**—(Sec. 2530.) The rule of descent prescribed in the last preceding section shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be in equal degree of consanguinity to the intestate, so that those who are in the nearest degree

anguinity shall take the shares which would have de-
led to them had all the descendants in the same degree
shall have died leaving issue been living, so that the
of the descendants who shall have died shall respect-
take the shares which their parents, if living, would
received.

902. If There Be No Children—Rule of Descent.—

(2531.) In cases where the intestate shall die without
endants, if the estate comes by the father, then it shall
id to the father and his heirs; if by the mother, the es-
or so much thereof as came by the mother, shall as-
to the mother and her heirs; but if the estate be a new
isition it shall ascend to the father for his life-time
then descend, in remainder, to the collateral kindred of
ntestate in the manner provided in this act; and, in de-
of a father, then to the mother, for her life-time; then
scend to the collateral heirs as before provided.

903. Estates—How to Go—Where No Father or

er.—(Sec. 2532.) The estate of an intestate, in de-
of a father and mother, shall go, first, to the brothers
sisters, and their descendants, of the father; next, to
brothers and sisters, and their descendants, of the
er. This provision applies only where there are no
red, either lineal or collateral, who stand in a nearer
ion.

904. Those of Half-blood—How to Inherit.—(Sec.

) Relations of the half-blood shall inherit equally
those of the whole blood in the same degree; and the
ndants of such relatives shall inherit in the same man-
s the descendants of the whole blood, unless the in-
uence come to the intestate by descent, devise, or gift,
ne one of his ancestors, in which case all those who
ot of the blood of such ancestor shall be excluded from
inheritance.

§ 905. **In Cases Not Provided for Descent According to Common Law.**—(Sec. 2534.) In all cases not provided for by this act, the inheritance shall descend according to the course of the common law.

§ 906. **All Who Inherit to Do So As Tenants in Common.**—(Sec. 2535.) Whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this act, they shall inherit as tenants in common, in proportion to their respective shares or rights.

§ 907. **By Settlement or Portion to Child, How Reckoned—Effect of.**—(Sec. 2536.) If any child of an intestate shall have been advanced by him, in his life-time, by settlement or portion of real or personal estate, or both of them, the value thereof shall be reckoned, for the purpose of this section, only as part of the real and personal estate of such intestate descendible to his heirs, and to be distributed to his next of kin, according to law; and, if such advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as herein reckoned, then such child and his descendants shall be excluded from any share of the real and personal estate of the intestate.

§ 908. **When Not Equal to Share of Estate.**—(Sec. 2537.) In cases where such advancement is not equal to the share that such child or relative, and his descendants, shall be entitled to receive, they shall be entitled to receive so much of the real and personal estate as shall be sufficient to make all the shares of the heirs in such real and personal estate and advancement to be as nearly equal as possible.

§ 909. **Value of Such Advancement, How Ascertained.**—(Sec. 2538.) The value of any real or personal estate so advanced shall be deemed to be that, if any, which was acknowledged by the person receiving the same by any re-

it, in writing, specifying the value; if no such written
evidence exists, then such value shall be estimated accord-
to its value at the time of advancing such money or
perty.

**910. Maintenance, Etc., Not to Be Taken As Advance-
ment.**—(Sec. 2539.) The maintaining, educating or giving
money to a child or heir, without a view to a portion or set-
tlement in life, shall not be an advancement within the
meaning of this act.

911. Construction of Term, "Real Estate."—(Sec.
2540.) The term "real estate," as used in this act, shall be
construed to include every estate, interest and right, legal
and equitable, in lands, tenements and hereditaments, ex-
cept such as are determined or extinguished by the death
of the intestate, seized or possessed thereof in any manner,
other than by lease for years and estate for the life of an-
other person.

§ 912. Construction of Term "Inheritance."—(Sec.
2541.) The term "inheritance," as used in this act, shall
be understood to mean real estate, as herein defined, de-
termined according to the provisions of this act.

§ 913. When Person Described As "Living."—(Sec.
2542.) Whenever, in any part of this act, any person is de-
scribed as living, it shall be understood that he was living
at the time of the death of the intestate from whom the de-
cent came; and, when any person is described as having
died, it shall be understood that he died before the intes-

**914. Of Expression "Come on Part of Mother" or "On
Part of Father."**—(Sec. 2543.) The expression used in this
act "where the estate shall have come to the intestate on



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the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by gift, devise or descent from the parent referred to, or from any relative of the blood of such parent.

§ 915. **Heir at Law May Be Made By Declaration in Writing.**—(Sec. 2544.) When any person may desire to make a person his heir at law, it shall be lawful to do so by a declaration in writing in favor of such person, to be acknowledged before any judge, justice of the peace, clerk of any court, or before any court of record in this state.

§ 916. **Declaration Must Be Recorded Before of Effect.**—(Sec. 2545.) Before said declaration shall be of any force or effect, it shall be recorded in the county where the said declarant may reside, or in the county where the person in whose favor such declaration is made may reside.



CHAPTER LVIII.

DOWER.

p. 53.—**Mansfield's Digest of the Statutes of Arkansas put in force in the Indian Territory by the Act of May 2, 1890.**

- 1. Dower in Lands.
- 1. Widow of Alien to Have Dower.
- 1. In Case of Exchange of Lands.
- 1. Mortgage Not to Affect.
- 1. Mortgage for Purchase Price.
- 1. Dower in Surplus Above Purchase Price.
- 1. Widow of Mortgagee Not Endowed.
- 1. Forfeited in Case of Divorce for Misconduct.
- 1. Provision in Lieu of Dower.
- 1. Assent of Wife.
- 1. To Bar Dower.
- 1. Election to Take in Lieu of Dower.
- 1. Same.
- 1. Manner of Election.
- 1. Forfeiture of Benefit in Lieu of Dower.
- 1. Dower Not Barred by Conveyance or Judgment.
- 1. Widow May Occupy Mansion House.
- 1. Same.
- 1. Assignment of to Include Dwelling House.
- 1. Assignment of, Widow's Choice.
- 1. Dower in Personal Estate.
- 1. In Personal Estate, No Children.
- 1. Widow's Dower at Her Death, Descends How.
- 1. Devise, in Lieu of Dower.
- 1. Election in Case of Devise.
- 1. Upon Election.
- 1. Sufficient Notice of Renunciation.
- 1. Time Within Which to Elect.
- 1. Widow to Have Option to Take Child's Part.
- 1. Relinquishment, How Executed.
- 1. Estates Less Than \$300.00.
- 1. Dower in Lands Sold Without Her Consent.
- 1. Heir to Assign Dower.
- 1. Acceptance by Widow.



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- 951. Heir, a Minor.
- 952. Procedure for Assignment.
- 953. Hearing.
- 954. Constructive Service.
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- 956. Minor, etc., Defendants.
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- 959. Report of Commissioners.
- 960. Procedure on Report.
- 961. Lands Not Capable of Division.
- 962. Possession.
- 963. Dower Not Affected by Sale.
- 964. Death of Widow.
- 965. Costs.

§ 917. **Dower in Lands.**—(Sec. 2571.) A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form.

§ 918. **Widow of Alien to Have Dower.**—(Sec. 2572.) The widow of an alien shall be entitled to dower of the estate of her husband in the same manner as if such alien had been a native-born citizen of this state.

§ 919. **In Case of Exchange of Lands.**—(Sec. 2573.) If a husband seized of an estate of inheritance in lands exchanges it for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

§ 920. **Mortgage Not to Affect.**—(Sec. 2574.) Where a person seized of an estate of inheritance in land shall be

secured a mortgage of such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person, except the mortgagee and those claiming under him.

§ 921. **Mortgage for Purchase Price.**—(Sec. 2575.) Where a husband shall purchase lands during coverture, and shall mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee or those claiming under him, although she shall not have participated in such mortgage; but she shall be entitled to her dower as against all other persons.

§ 922. **Dower in Surplus Above Purchase Price.**—(Sec. 2576.) When, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of the decree of a court of chancery, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus for her life as her dower.

§ 923. **Widow of Mortgagee Not Endowed.**—(Sec. 2577.) A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he have acquired an absolute estate therein during the marriage.

§ 924. **Forfeited in Case of Divorce for Misconduct.**—(Sec. 2578.) In case of divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

§ 925. **Provision in Lieu of Dower.**—(Sec. 2579.) When estate in land shall be conveyed to a person and his in-

tended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of erecting jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim for dower of such wife in any land of the husband.

§ 926. **Assent of Wife.**—(Sec. 2580.) The assent of the wife to such jointure shall be evinced, if she be of full age by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

§ 927. **To Bar Dower.**—(Sec. 2581.) Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to by such wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

§ 928. **Election to Take in Lieu of Dower.**—(Sec. 2582.) If before her marriage, but without her assent, or if, after her marriage, land shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the land of her husband, but she shall not be entitled to both.

§ 929. **Same.**—(Sec. 2583.) If land be devised to a woman, or a pecuniary or other provision be made for her by will in lieu of her dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed of the lands of her husband.

§ 930. **Manner of Election.**—(Sec. 2584.) When a woman shall be entitled to an election under either of the

ast preceding sections, she shall be deemed to have d to take such jointure, devise or pecuniary provision, s within one year after the death of her husband she enter on the lands to be assigned to her for her dower, mmence proceedings for the recovery or assignment of.

31. Forfeiture of Benefit in Lieu of Dower.—(Sec.

b) Every jointure, devise and pecuniary provision, in of dower, shall be forfeited by the woman for whose it it shall be made, in the same cases in which she l forfeit her dower; and, upon such forfeiture, any es- so conveyed for jointure, and every pecuniary provi- so made, shall immediately vest in the person, or his representatives, in whom they would have vested, on etermination of her interest therein, by the death of woman.

32. Dower Not Barred By Conveyance or Judgment.

(c. 2586.) No act, deed or conveyance, executed or rmed by the husband without the assent of his wife, ed by the acknowledgment thereof in the manner re- d by law, shall pass the estate of a married woman; io judgment or decree confessed or recovered against and no laches, default, covin or crime of the husband prejudice the right of his wife to her dower or joint- or preclude her from the recovery thereof, if otherwise ed thereto.

33. May Occupy Mansion House.—(Sec. 2587.)

A v may tarry in the mansion or chief dwelling-house of usband for two months after his death, whether her r be sooner assigned her or not, without being liable y rent for the same; and, in the meantime, she shall a reasonable sustenance out of the estate of her hus-

§ 934. **Same.**—(Sec. 2588.) If the dower of any widow is not assigned and laid off to her within two months after the death of her husband, she shall remain and possess the mansion or chief dwelling-house of her late husband, together with the farm thereto attached, free of all rent, until her dower shall be laid off and assigned to her.

§ 935. **Assignment of to Include Dwelling House.**—(Sec. 2589.) In all assignments of dower to any widow, it shall be the duty of the commissioners who may be appointed to lay off the dower (if the estate will permit without essential injury) so to lay off the dower in the lands of the deceased husband that the usual dwelling of the husband and family shall be included in such assignment of dower to the widow.

§ 936. **Assignment of, Widow's Choice.**—(Sec. 2590.) The commissioners appointed to lay off dower in the lands of the deceased husband shall, at the request of the widow to be endowed, lay off the same on any part of the lands of the deceased, whether the same shall include the usual dwelling of the husband and family or not; **provided**, the same can be done without essential injury to such estate.

§ 937. **In Personal Estate.**—(Sec. 2591.) A widow shall be entitled, as part of her dower, absolutely and in her own right, to one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts and evidences of debt whereof the husband died seized or possessed.

§ 938. **In Personal Estate—No Children.**—(Sec. 2592.) If a husband die, leaving a widow and no children, such widow shall be endowed of one-half of the real estate of which such husband died seized, and one-half of the personal estate, absolutely and in her own right.

§ 939. **Widow's Dower, at Her Death, Descends How.**—(Sec. 2593.) At the death of any widow who hath dower in

land, such property shall descend in accordance with the will of the deceased husband, or, if the husband died intestate, then to descend in accordance with the law for the distribution of intestate's estate.

§ 940. **Devise—In Lieu of Dower.**—(Sec. 2594.—If any husband shall devise and bequeath to his wife any portion of his real estate of which he died seized, it shall be deemed and taken, in lieu of dower, out of the estate of such deceased husband, unless such testator shall, in his will, declare otherwise.

§ 941. **Election in Case of Devise.**—(Sec. 2595.) In cases of provision made by will for widows, in lieu of dower, such widow shall have her election to accept the same or be endowed of the lands and personal property of which her husband died seized.

§ 942. **Upon Election.**—(Sec. 2596.) If a widow, for whom provision has been made by will, elect to be endowed of the lands and personal property of which her husband died seized, she shall convey, by deed of release and quitclaim, to the heirs of such estate the land so to her devised and bequeathed, which deed shall be acknowledged or proven and recorded as other deeds for real estate are required to be acknowledged or proven and recorded.

§ 943. **Sufficient Notice of Renunciation.**—(Sec. 2597.) Such renunciation of the devise or bequest by deed, as provided for in the last preceding section, shall be deemed a sufficient notice of the renunciation of the interest of such widow in all the benefits she might claim by such will in the lands of such deceased husband.

§ 944. **Time Within Which to Elect.**—(Sec. 2598.) Such renunciation by deed shall be executed within eighteen

months after the death of such husband, or the widow will be deemed to have elected to take the devise and bequest contained in such will.

§ 945. **Widow to Have Option to Take Child's Part.**—(Sec. 2599.) The widow of any deceased person, who shall file in the office of the clerk of the court of probate, or with the probate court of the proper county, a relinquishment of her right of dower in and out of the estate of her deceased husband, shall be entitled to receive of the estate of which her said husband died seized and possessed, whether real personal or mixed, a portion or share thereof, absolutely in her own right, equal to that of a child, which shall be set aside and delivered to her as now provided by law for dower.

§ 946. **Relinquishment, How Executed.**—(Sec. 2600.) Said relinquishment shall be in writing and acknowledged before the clerk or some justice of the peace, and filed within sixty days after the grant of letters of administration on the estate of the decedent.

§ 947. **Estates Less Than \$300.00.**—(Sec. 2601.) Nothing herein contained shall be so construed as to repeal any law vesting estates worth less than three hundred dollars in the widow and children of deceased persons.

§ 948. **Dower in Lands Sold Without Her Consent.**—(Sec. 2602.) A widow shall be endowed of lands sold in the lifetime of the husband without her consent in legal form against all creditors of the estate.

§ 949. **Heir to Assign Dower.**—(Sec. 2603.) It shall be the duty of the heir at law of any estate, of which the widow is entitled to dower, to lay off and assign such dower as soon as practicable after the death of the husband of such widow.

10. Acceptance by Widow.—(Sec. 2604.) If such assignment by the heir at law be accepted by the widow, the heir at law shall make a statement of such assignment, stating what lands have been assigned, and the acceptance of such widow shall be indorsed thereon; which statement and specification of dower, and acceptance thereof, shall be proved or acknowledged by both parties, and filed and recorded by the clerk of the court of probate, and shall then be a sufficient assignment of dower, and bar any further demand for dower in the property covered in the statement of dower.

11. Heir, A Minor.—(Sec. 2605.) If the heir to any estate be a minor, he shall act, in the assignment of dower, through a guardian.

12. Procedure for Assignment.—(Sec. 2606.) If dower is assigned to the widow within one year after the death of her husband, or within three months after demand therefor, she may file in the court of probate, or in the clerk's office thereof, in vacation, a written petition in which a description of the lands in which she claims dower, the names of those having an interest therein and the nature of such interest shall be briefly stated in ordinary language, with a prayer for the allotment of dower; and, upon such petition, all persons interested in the property shall be summoned to appear and answer the petition on the first day of the next term of the court.

13. Hearing.—(Sec. 2607.) Upon a summons being served upon all who have an interest in the property ten days before the commencement of the term, the court may make an order for the allotment of dower in accordance with the law of dower.

14. Construction Service.—(Sec. 2608.) Parties interested may be constructively summoned as provided by the law in other cases.

§ 955. **No Verification.**—(Sec. 2609.) No verification shall be required to the petition or answer.

§ 956. **Minor, Etc., Defendants.**—(Sec. 2610.) If the petition is filed against infants, married women or persons of unsound mind, the guardian, committee or husband may appear and defend for them and protect their interests; and, if they do not, the court shall appoint some discreet person for that purpose.

§ 957. **Pleading.**—(Sec. 2611.) If any person summoned, as provided in sections 2606 and 2607, desires to contest the right of the petitioner, or the statements in the petition, he shall do so by a written answer, and the questions of law and fact thereupon arising shall be tried and determined by the court upon the petition, answer, exhibits and other testimony.

§ 958. **Commissioners.**—(Sec. 2612.) The court shall, in all cases, when it orders and decrees dower to any widow, appoint three commissioners, of the vicinity, who shall proceed to the premises in question, and, by survey and measurement, lay off and designate, by proper metes and bounds, the dower of such widow in accordance with the decree of the court.

§ 959. **Report of Commissioners.**—(Sec. 2613.) Such commissioners shall make a detailed report of their proceedings to the next term of the court.

§ 960. **Procedure on Report.**—(Sec. 2614.) Upon such report being returned the court may confirm or set the same aside, or remand it to the commissioners for correction. If approved by the court, said report shall be entered of record and be conclusive on the parties.

§ 961. **Lands Not Capable of Division.**—(Sec. 2615.) In cases where lands or tenements will not admit of division,

he court, being satisfied of that fact, or on the report of the commissioners to that effect, shall order that such tenements or lands be rented out, and that one-third part of the proceeds be paid to such widow, in lieu of her dower in such lands and tenements.

§ 962. **Possession.**—(Sec. 2616.) If the land assigned and laid off to any widow be deforced from her possession, she shall have her action for the recovery of possession thereof, with double damages for such deforcement; or she may sue for the damages alone, and recover double the actual damages sustained, from time to time, until she be put in possession of her dower, held by such deforcer or detainer.

§ 963. **Dower Not Affected by Sale.**—(Sec. 2617.) If the heir alien lands of which a widow is entitled to dower, she shall still be decreed her dower in such lands so aliened, in whose hand soever the land may be.

§ 964. **Death of Widow.**—(Sec. 2618.) A widow may bequeath the crop in the ground of the land held by her in dower at the time of her death. If she die intestate, it shall go to her administrator.

§ 965. **Costs.**—(Sec. 2619.) The costs of allotting dower shall be apportioned among the parties in the ratio of their interests, and the costs arising from any contest of fact or law shall be paid by the party adjudged to be in the wrong.

CHAPTER LIX.

TRIBAL STATUTES OF DESCENT AND DISTRIBUTION.

- § 966. Descent and Distribution, Cherokee.
- 967. Descent and Distribution, Chickasaw.
- 968. Descent and Distribution, Choctaw.
- 969. Descent and Distribution, Creek.
- 970. Creek Law Affecting Non-citizens.

CHEROKEE.

(Sec. 518, Laws of Cherokee Nation, of 1892.)

§ 966. Whenever any person shall die possessed of property not devised, the same shall descend in the following order, to-wit:

(1st.) In equal parts to the husband or wife, and children of such intestate, and their descendants; the descendants of a deceased child, or grandchild, to take share of the deceased parent equally among them.

(2d.) To the father and mother equally, or to the survivor of them.

(3d.) In equal parts to the brothers and sisters of such intestate, and their descendants; the descendants of brothers and sisters to take the share of the deceased parent equally among them.

(4th.) When there are none of the foregoing persons inherit, the property of such deceased person shall go to his next of kin by blood. Kindred of the whole and half blood, in the same degree, shall inherit equally.

(5th.) The property of intestates, who have no surviving relative to inherit as above, shall escheat to the treasury of the nation, to be placed to the credit of the orphan fund.

CHICKASAW.

(Constitution, Treaties and Laws of Chickasaw Nation.)

67. (1.) Be it enacted by the Legislature of the Chickasaw Nation, That from and after the passage of this act the property of all persons who die intestate or without will shall descend to the legal wife or husband and children.

Be it further enacted, That in case such deceased person has neither wife, nor husband, nor children, his or her grandchildren (if any) shall inherit the estate.

Be it further enacted, That in case there be no children, then the brother or sister shall inherit the estate, and the next in kin shall be the father and mother, or either of them.

Be it further enacted, That in case such person had no wife nor husband, children or grandchildren, brother or sister, father or mother, then the property shall descend to the half brothers and sisters of the deceased and their legal issue.

CHOCTAW.

(Durant's Code, 1894.)

68. The property of all persons who die intestate or without a will shall descend to his legal wife or husband and their children; and in case such deceased person has no wife or husband nor children, his or her grandchildren (if any) shall inherit the estate; and in case there is no child, the father or mother of such deceased person, or either of them, shall inherit the estate; and in case such deceased person has neither wife nor husband, nor children nor grandchildren, or father or mother, his or her estate shall descend to his or her brothers and sisters, and, if none, to their



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lawful children. Should there be none of the above mentioned relatives to intestate deceased person, the estate shall descend to the half brothers and sisters of the deceased person and to their legal issue.

CREEK.

§ 969. Be it further enacted, That if any person die, without a will, having property and children, the property shall be equally divided among the children by disinterested persons, and in all cases where there are no children the nearest relation shall inherit the property.

The lawful or acknowledged wife of a deceased husband shall be entitled to one-half of the estate, if there are no other heirs, and an heir's part if there should be other heirs, in all cases where there is no will. The husband surviving shall inherit of a deceased wife in like manner.

CREEK LAW AFFECTING NON-CITIZENS.

(Sec. 1, Chap. 10, Peryman's Compiled Creek Laws of 1890.)

§ 970. All non-citizens not previously adopted, and being married to citizens of this nation, or having children entitled to citizenship, shall have the right to live in this nation and enjoy all privileges enjoyed by other citizens, except in participation in the annuities and final participation in the lands.

CHAPTER LX.

RULES OF PROCEDURE IN PROBATE MATTERS.

(Adopted and promulgated by the Justices of the Supreme Court, June 11, 1914; Effective July 15, 1914, as amended June 11, 1917; amendments effective July 10, 1917.)

§ 971. Rule 1. The.....of each.....are hereby set apart and designated as the dates on which the court will hear guardians' reports: **Provided**, That such reports have been on file and notice given, as provided in Rule 3.

Rule 2. All guardians are required to make annual or semi-annual reports, unless otherwise directed, under oath, showing fully and completely the description, character, kind, and value of all property held for their wards. All items of receipts and disbursements must be in detail and receipts produced and filed for sums paid out. All securities and assets should be listed in each report, and copies of deeds, mortgages, etc., evidencing same, recorded and attached thereto as exhibits. Upon an approval of any order of court to invest the funds of a ward, guardians shall attach to their reports copies of evidence of title or other investment. The date and amount of guardian's bond, premium paid, if any, as well as the names, addresses, and solvency of securities thereon, must be given. The name, age, sex of the ward, and relationship, if any, to the guardian should be stated, and the school advantages disclosed. All reports must be self-explanatory. A failure or refusal to file reports as due will be grounds for removal.

Rule 3. Upon the filing of the reports and fixing of the date for hearing thereof, the judge shall cause notice to be

given of the date of such hearing to the persons having custody of the ward, the representative of the Interior Department or probate attorney, at least ten days before the date of the hearing. Any person or persons interested may appear and make objections, if so desired, to the approval of such reports, and offer evidence to support such objections.

Rule 4. No receipts from the ward upon the final accounting of a guardian will be accepted or considered unless the ward be brought into open court, and upon the hearing of said final receipt the stenographic notes shall be transcribed and a copy thereof filed with the papers in the case. In the consideration of any reports, annual or final, any item included in any previous reports may be reviewed.

Rule 5. Petitions for the sale of land of minors and incompetents will be heard.....of each..... On the hearing on petitions for sale, the guardian, person in custody, and the ward himself, when over fourteen years of age, must be present and must be examined as to the necessity for said sale and the truth of the allegations of the petition, and furnish such additional evidence as the court may require. The evidence offered must be taken down and transcribed and a copy thereof filed with the papers in the case. No bid will be considered by the court unless a certified check in the amount of ten per cent (10%) of the amount of the bid be deposited either in court or with the guardian offering the land for sale.

Rule 6. In the sale of minors' lands or minors' interest in land the guardians shall be required to render to the court for his approval, before confirmation of sale, an account of sale showing each item of expense incurred in such sale, and in no case shall abstract fees be charged against the minors' estate, except by a special agreement with the court at or prior to the time of filing bid. Confirmation will not be had except on the.....

RULES OF PROCEDURE IN PROBATE MATTERS.

§ 971

. Under the sale of real estate by guardian, no fees of the following schedule of fees will be allowed s:

first \$500.00 or less.....	10 per cent
500.00 to \$1,500.00, inclusive.....	5 per cent
1,500.00 to \$3,000.00, inclusive.....	2 per cent
above \$3,000.00.....	1 per cent

in no case shall the fee exceed the sum of \$300.00. minimum fee will be \$25.00, unless the court in grant-petition for the sale shall stipulate that the fee and incident thereto shall be borne by the purchaser.

b. No petition for the sale of ward's property, or for the payment by the Interior Department of the guardian, will be considered if said guardian is negligent in making reports or filing inventory as required by law.

. No oil and gas, or other mineral lease, covering land going to minors or incompetents, will be approved after sale in open court to the highest and best responsible bidder. All petitions for the approval of oil and gas shall be filed at least five (5) days before the land is sold as provided herein, and notice of such sale shall be given by posting and by publication where practicable, and shall be on.....of each

0. (Eliminated in revision.)

1. Guardians shall not expend for or on account of wards any sum unless first authorized by the court, in case of sickness of the ward, or other emergency, in event notice must be given immediately to the

2. The national attorney, or any of the probate attorneys for the Five Civilized Tribes, or the representa-

tives of the Department of the Interior (or Department of Justice in the Seminole Nation), will be recognized in any matter involving the person or property of a citizen of said nation.

Rule 13. Trust funds must be deposited by the guardian as trustee, and not to his personal account, and when an individual is guardian for several persons or estates, the accounts shall be deposited and kept separate and apart.

Rule 14. In the settlement of a guardian's account, where the guardian is the parent of the ward, no allowance will be made from the ward's estate for board and keep, except it is made to appear a positive injustice would result from the enforcement of such rule, and unless said parent is unable to support said ward.

Rule 15. All guardians shall be required to secure loans for funds in their hands belonging to their wards with real estate first mortgage security, not to exceed fifty per cent (50%) valuation of the land, approved by the county court. Such guardians may, with the approval of the court, invest said funds in bonds of the United States or of this State or any municipality thereof.

Rule 16. No will or other instrument purporting to be a will covering the lands of a restricted Indian of the Five Civilized Tribes, whether such land be his individual allotment or inherited land, when submitted by the allottee or other person to the proper probate court, as required under existing laws, shall receive the acknowledgment of nor be admitted to probate by such probate court until after notice shall have been given to the local probate or tribal attorneys for the tribes or for the Department of the Interior, or a representative thereof.

Rule 17. These rules shall also apply to executorship and administrations in so far as they are applicable, especially in so far as sales of property and accountings are concerned.

Rule 18. All advertisements not required by law may be waived with the consent of the county court upon the approval of the probate attorney or tribal attorney.

It is ordered and directed by the Supreme Court that the judge of any court wherein said rules may be applicable shall, immediately after conference with the probate attorney assigned to his county or district by the Commissioner of Indian Affairs, fill in all blank spaces in said rules, left vacant by the justices of the Supreme Court, to suit the convenience of said judges and facilitate the efficient and orderly transaction of business in their respective courts.

And as revised and amended, the rules of procedure in probate matters heretofore in force are adopted and promulgated as the rules of procedure in such matters, and as so promulgated and adopted, shall apply to the Supreme Court, district courts, superior courts, county courts and all other courts of record throughout the state in which they may be applicable and that they shall be of full force on and after the 10th day of July, 1917.

CHAPTER LXI.

ACT FEBRUARY 8, 1918.

An Act providing for the sale of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations, Oklahoma. (Public, No. 195, 65th Congress, H. R. 195.)

- § 972. Sale of Coal and Asphalt Deposits Authorized.
- 973. Terms and Conditions of Sale.
- 974. Tracts Remaining Unsold, Resale.
- 975. Rights of Lessees.
- 976. Purchases for State, County or Municipal Purposes.
- 977. Secretary to Prescribe Rules.
- 978. Patent, When.
- 979. Expenses of Sale, Appraisalment, etc.

§ 972. **Sale of Coal and Asphalt Deposits Authorized.**
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to sell the coal and asphalt deposits, leased and unleased, in the segregated mineral area of the Choctaw and Chickasaw Nations, in Oklahoma, in the manner hereinafter set forth.

Before offering such coal and asphalt deposits for sale, the Secretary of the Interior, under such rules and regulations as he may prescribe, shall cause the same to be appraised. Such appraisalment, both as to leased and unleased lands, shall be described in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and shall be completed within six months after the passage of this Act.

§ 973. **Terms and Conditions of Sale.**—(Sec. 2.) That the sale of such deposits shall be thoroughly advertised, and shall not later than six months from the final appraisalment be sold.

offered for sale to the highest bidder at public auction in tracts to conform with such appraisement at not less than the appraised value so fixed, except that isolated tracts of less than nine hundred and sixty acres may be sold separately under like provisions: **Provided**, That twenty per centum of the purchase price shall be paid in cash, and the remainder shall be paid in four equal annual payments from the date of the sale, and all deferred payments on all deposits sold under the provisions of this Act shall bear interest at the rate of five per centum per annum, and shall mature and become due before the expiration of four years after the date of such sale.

§ 974. **Tracts Remaining Unsold, Resale.**—(Sec. 3.) That immediately after the expiration of one year after the coal and asphalt deposits shall have been offered for sale, or forfeited for non-payment under the terms of the sale, the Secretary of the Interior, under rules and regulations to be prescribed by him, shall readvertise and cause to be sold to the highest bidder at public auction, in tracts to conform to the descriptions of the legal subdivisions heretofore designated by the Secretary of the Interior, and at not less than said appraised value, retaining the right to reject any and all bids, all coal and asphalt deposits remaining unsold and all coal and asphalt deposits forfeited by reason of such non-payment of any part of the purchase price: **Provided**, that at the expiration of six months thereafter the Secretary of the Interior may again readvertise and offer the same for final sale to the highest bidder at public auction, upon such terms as he may prescribe and at such valuation, independent of the appraised value, as he may fix.

§ 975. **Rights of Lessees.**—(Sec. 4.) That such deposits of coal or asphalt on the leased lands shall be sold subject to all rights of the lessee, and that any person acquiring such deposits of coal or asphalt shall take the same subject to said rights and acquire the same under the express un-

derstanding and agreement that the Department of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over the operation of said mines by reason of the Indian ownership of said property, and that said properties thereafter shall be operated under and in conformity with such laws as may be applicable thereto, and that advance royalty paid by any lessee and standing to the credit of said lessee shall be credited by said purchaser to the extent of the amount thereof, and that no royalties shall be paid by said lessee to said purchaser until the credit so given shall be exhausted at the rate of eight cents per ton mine run, and that the royalty to be paid thereafter by said lessee to said purchaser shall be eight cents per ton mine run of coal, and that any lessee may, at any time after completion of such sale, transfer or dispose of his leasehold interest without any restriction whatever; and that any lessee shall have the preferential right, provided the same is exercised within ninety days after the approval of the completion of the appraisement of the minerals as herein provided, to purchase at the appraised value any or all of the surface of the lands lying within such lease, held by him and heretofore reserved by order of the Secretary of the Interior, and upon the terms as above provided, and shall also have the preferential right, except as herein otherwise provided, to purchase the coal deposits embraced in any lease held by such lessee by taking same at the highest price offered by any responsible bidder at public auction at not less than appraised value: and if any lessee becomes the purchaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price thereof, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal on any other lease which he may own and operate: **And provided**, That nothing herein contained shall be construed as limiting or curtailing the rights of any lessee

or owner of mineral deposits from acquiring additional surface lands for mining operations as provided by the Act of Congress of February nineteenth, nineteen hundred and twelve: **Provided further**, That no person or corporation shall be permitted to acquire more than four tracts of nine hundred and sixty acres each, except where such person, firm or corporation has such tracts under existing valid lease.

§ 976. **Purchases for State, County or Municipal Purposes.**—(Sec. 5.) That the surface of any segregated coal and asphalt lands in the Choctaw and Chickasaw Nations, in the State of Oklahoma, which may have been, or may be, condemned under the laws of the State of Oklahoma for State penal institutions, or for county or municipal purposes, as authorized by the Indian Appropriation Act approved March third, nineteen hundred and nine, shall be construed to include the entire estate, save the coal and asphalt reserved and existing valid leases thereon: **Provided**, That the State of Oklahoma shall have the preferential right to purchase, at the appraised value thereof, upon the same terms as apply to other coal and asphalt deposit sales under this Act, all coal and asphalt deposits, underlying the surface heretofore purchased by the said State of Oklahoma, for the grounds of the State penitentiary: **Provided**, That said coal deposit under said land shall not be mined by convict labor for the purpose of sale to any private agencies, individual person, or corporation, or to be sold for private or commercial purposes.

§ 977. **Secretary to Prescribe Rules.**—(Sec. 6.) That the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules, regulations, terms, and conditions, not inconsistent with this Act, as he may deem necessary to carry out its provisions, and shall establish an office for such purpose at McAlester, Pittsburg County, Oklahoma.



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§ 978. **Patent, When.**—(Sec. 7.) That when the full chase price for any property sold hereunder is paid chief executives of the two tribes shall execute and de with the approval of the Secretary of the Interior, to purchaser, an appropriate patent, conveying to the chaser the property so sold: **Provided**, That the purchaser of any coal or asphalt deposits shall have the right at time before final payment is due to pay the full purchase price on said coal and asphalt deposits, with accrued interest, and shall thereupon be entitled to a patent therefor herein provided.

§ 979. **Expenses of Sale, Appraisement, Etc.**—(Sec. 8.) That there is hereby appropriated, out of any Choctaw Chickasaw funds in the Treasury not otherwise appropriated the sum of fifty thousand dollars to pay the expenses of appraisement, advertisement, and sale herein provided for, and the proceeds derived from the sales hereunder shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws.

Approved, February 8, 1918.



**Rules and Regulations Prescribed by the Secretary
of the Interior governing the Leasing and Sale of
Restricted Lands, the Removal of Restrictions
Therefrom, and the Sale of the Segregated and Un-
allotted Lands.**

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CHAPTER LXII.

REGULATIONS GOVERNING LEASING OF LANDS AND REMOVAL OF RESTRICTIONS OF MEM- BERS OF FIVE CIVILIZED TRIBES.

prescribed by the Secretary of the Interior for the purpose of carrying into effect the provisions of the agreements with the Creek and Cherokee Nations and the Acts of Congress approved April 26, 1906, and May 27, 1908.

1. Signatures of Indians Who Cannot Write.

REGULATIONS OF APRIL 20, 1908.

LEASING

1. All Former Regulations Superseded.
2. Acts Affecting, Cherokee Agreement.
1. Acts Affecting, Creek Agreement.
1. Legislation Affecting Full-blood Allottees.
1. How to Procure Approval of Mineral Lease.
1. Leases in Quadruplicate.
1. Filing, Constructive Notice.
1. Lease After Selecting Allotment.
1. Not More Than 4800 Acres to One Person or Firm.
1. Application for Approval.
1. Application of Corporation.
2. Application of Corporation, Requirements.
3. Application where Lessor a Minor.
4. Affidavit of Indian Lessor.
5. Lease of Undivided Inherited Land.
6. Oil and Gas Lease, Bond.
7. Government May Require Additional Information.
3. Failure to Comply With Requirements.
1. Royalties on Oil.
1. Royalties on Gas.
1. Royalty on Coal.
1. Royalty on Asphalt.
1. Royalty on Minerals Not Mentioned.
1. Royalties, To Whom Paid.

- 1005. Purchaser May Pay Royalty.
- 1006. Royalty Where No Production.
- 1007. Rental for Failure to Drill Within Year.
- 1008. Royalty Reports.
- 1009. Royalties, Rents, etc., Due Minors.
- 1010. No Operation Before Approval.
- 1011. Lessor or Agent to Have Access to Premises.
- 1012. Use of Natural Gas for Outside Illumination, Reg
- 1013. Waste, Penalty.
- 1014. Abandoning Well, Penalty.
- 1015. Tankage.
- 1016. Sale or Removal of Oil.
- 1017. Material for Rigs, etc., from Allotted Land.
- 1018. Log of Well to be Kept.
- 1019. Lessees to File Plat of Leases When Requested.
- 1020. No Tank or Well Within 200 Feet of Building, etc
- 1021. Assignments of Leases.
- 1022. Cancellations.
- 1023. Forms.
- 1024. Leases Upon Land from Which Restrictions H
Removed at Time of Application.
- 1025. Leases Upon Land from Which Restrictions Ha
Removed Since Execution.
- 1026. Leases Upon Land from Which Restrictions Are l
After Approval.
- 1027. Leases Where Restrictions Upon Part of Land
Been Removed.
- 1028. Regulations Retroactive as Well as Prospective.
- 1029. Agricultural Leases.
- 1030. Requirements for Approval.
- 1031. Indian Agent to Make Investigation.
- 1032. Bond of Lessee.
- 1033. Regulations for Oil and Gas Leases Applicable.
- 1034. General Supervision.

REGULATIONS JUNE 20, 1908.

LEASING AND REMOVAL OF RESTRICTIONS.

- 1035. Sec. 6 of Act May 27, 1908, Quoted.
- 1036. District Agents.
- 1037. Duties of District Agents.
- 1038. Duties of District Agents, Continued.
- 1039. Duties of District Agents, Continued.
- 1040. Copies of Reports.
- 1041. Leases to be Filed With District Agent.

- . **Application for Removal of Restrictions Filed With District Agent.**
- . **Sections 1-43 Regulations of April 20, 1908, Repromulgated With Modifications. Secs. 44-48 Revised.**
- . **All Leases to be Presented to District Agent.**
- . **No Lease Extending Beyond Minority Except When Approved by Probate Court.**
- . **Leases Upon Lands of Minors Modified to Conform to New Regulations.**
- . **Approval of Tribal Authorities Not Necessary for Lease of Seminole Lands.**
- . **Amendment of Section 994.**
- . **Certain Leases Not Required to be Approved.**
- . **Leases Requiring Approval.**
- . **Manner of Obtaining Agricultural Leases.**
- . **Leases Other Than Mineral, Agricultural or Grazing, Form of.**
- . **Removal of Restrictions, Legislation Quoted.**
- . **Application for Removal of Restrictions.**
- . **Classes of Lands to Which Regulations Apply.**
- . **Application for Removal, Duty of Indian Agent.**
- . **Restrictions Removed Where Applicant Competent.**
- . **Sale of Land Upon Removal of Restrictions.**
- . **Land to be Inspected and Appraised.**
- . **Endorsement Upon Order of Removal.**
- . **Endorsement Upon Deed.**
- . **Delivery of Deed.**
- . **Proceeds of Sale.**
- . **May Direct Sale for Part Cash.**

AMENDMENTS AND ADDITIONS.

- . **Mineral Leases, Relinquishment of Supervision, Notice of.**
- . **Amendment of Section 1059—Appraised Value.**
- . **Amendment of Section 1009—Royalties Due Minors and Incompetents.**
- . **Amendment of Sections 985, 1000, 1006.**
- . **Oil and Gas Leases for Ten Years.**
- . **Royalties Upon Oil and Gas.**
- . **Capacity of Well, How Determined.**
- . **Not to Exceed 75% Capacity of Well.**
- . **Annual Royalty Before Development.**
- . **Rental for Delay in Drilling.**
- . **Effect of Change in Regulations Upon Existing Leases.**
- . **Amendment of Sections 1006 and 1007 as Amended by Section 1068.**

- 1077. Advance Royalty Not Refunded.**
- 1078. Option to Defer Drilling for More Than One Year, tions.**
- 1079. Amendment of Section 1064.**
- 1080. Sale of Land from Which Restrictions Removed.**
- 1081. Amendment of Section 15, Regulations of June 11, 190**
- 1082. Royalty on Oil.**
- 1083. Amendment of Section 1060 as Amended by Section**
- 1084. Withholding Money Due Member Authorized.**
- 1085. Amendment of Sections 986, 1010 and 1013 as Amend**
- 1086. Leases in Quadruplicate—To be Filed Within Thirty**
- 1087. Fee for Filing Leases and Assignments.**
- 1088. Notice of Execution of Lease.**
- 1089. No Operation Until Lease Approved.**
- 1090. Facilities for Capping Wells to be Provided.**
- 1091. Escape of Gas Not Permitted.**
- 1092. Casting Off Water.**
- 1093. Penalty for Failure to Comply.**
- 1094. Date Amendments Became Effective.**
- 1095. Amendment of Section 1001 as Amended by Section**
- 1096. Agricultural Leases, Requirements.**
- 1097. Amendment of Section 1058.**
- 1098. Sale of Restricted Lands, Bids.**
- 1099. Amendment of Section 1064 as Amended by Section**
- 1100. Sale of Restricted Land, Interest on Deferred Pay**
- 1101. Amendment of Section 995.**
- 1102. Lease Extending Beyond Minority of Lessor.**
- 1103. Lease on Lands of Minor Near Majority.**
- 1104. Lease Extending Beyond Minority, Approval.**
- 1105. Amendment of Section 996.**
- 1106. Bonds.**

**REGULATIONS GOVERNING OIL AND GA
OPERATIONS.**

- 1107. Definition of Terms Used.**
- 1108. No Operations Until Lease Approved.**
- 1109. Inspector, Powers and Duties of.**
- 1110. To Supervise Operations.**
- 1111. Duties of Lessee, to Appoint Local Agent.**
- 1112. To Submit Report Showing Location of Proposed**
- 1113. To Keep Log of Well.**
- 1114. To Furnish Plats of Premises.**
- 1115. To Mark All Rigs and Wells.**
- 1116. No Well to be Drilled Within Certain Limits.**

- . Mud-fluid Process.
- . To Provide Slush Pit.
- . To Case Off Water.
- . Each Sand to be Protected.
- . Gate Valve.
- . Gas Not to be Wasted.
- . Oil and Gas to be Separated.
- . Gas Not to be Used for Lifting Oil.
- . Oil or Gas Not to be Wasted.
- . Use of Natural Gas.
- . Gas in Flambeau Lights.
- . Must Notify Superintendent of Intention.
- . Abandoning Wells.
- . Abandoning Wells, Regulation.
- . Abandoning Wells in Coal Vein.
- . Manner of Plugging to be Approved.
- . Disposal of B-S.
- . Report of Accidents.
- . Tankage, etc.
- . Payment of Royalty by Purchaser.
- . Timber from Osage Lands Not to be Used.
- . Damage to Surface of Land.
- . Failure to Comply With Regulations.

AMENDMENTS.

- . Agricultural Leases, Approval by Superintendent.
- . Amendment of Section 1058 as Amended by Section 1097.
- . Bids for Purchase of Restricted Lands.

—The following Departmental instructions relative to signature of Indians who cannot write apply to Departmental leases and accompanying papers and must be carefully followed:

980. **Signatures of Indians Who Cannot Write.**—after any Indian who cannot write his name will be required to sign all official papers by making a distinct imprint of the right thumb (or the left, in case of loss of thumb) in lieu of cross mark. Such signatures must be witnessed by two persons, one of whom must be a United States Government employee (such as Field Clerk, Postmaster,

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United States Commissioner, etc.) Where possible, lessees are requested to take the lessor to the nearest District Agent and have execution of lease supervised by Field Clerk's office.

LEASING.

REGULATIONS OF APRIL 20, 1908.

§ 981. All Former Regulations Superseded.—To carry out the provisions of existing law as quoted herein, the following regulations governing the leasing of lands of members of the Five Civilized Tribes are hereby prescribed. All former regulations for this purpose are replaced and superseded by these regulations:

ACTS AFFECTING LEASES.

(Section 72 of the Act of Congress Approved July 1, 1902)
(32 Stat. L. 716.)

§ 982. Acts Affecting Cherokee Agreement.—Cherokee citizens may rent their allotments when selected for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same; but leases for a period longer than one year for grazing purposes, and for a period longer than five years for agricultural purposes, and for mineral purposes, may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this section shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.

(Section 17 of the Act of Congress Approved June 30, 1902.)
(32 Stat. L. 500.)

§ 983. Acts Affecting Creek Agreement.—Section 37 of

an agreement ratified by said Act of March 1, 1901, is amended, and as so amended is re-enacted to read as follows:

"Creek citizens may rent their allotments, for strictly non-mineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes, and for a period of longer than five years for agricultural purposes, and leases for mineral purposes, may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character in violation of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

(Act of Congress Approved April 26, 1906.)
(34 Stat. L. 137.)

§ 984. **Legislation Affecting Full-Blood Allottees.**—(Sec. 1.) That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek or Seminole Tribes shall have power to convey, donate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by Act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior: **Provided, however,** That such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such

inability, may authorize the leasing of such homestead under such rules and regulations: **Provided further,** That conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotments and subsequent to removal of restriction, where patent thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording of delivery of patent or deed; but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided and every deed executed before, or for the making of which a contract or agreement was entered into before the removal of restrictions be, and the same is hereby, declared void: **Provided further,** That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee.

(Sec. 20.) That after the approval of this act all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads, of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes shall be in writing and subject to approval by the Secretary of the Interior, and shall be absolutely void and of no effect without such approval: **Provided,** That allotments of minors and incompetents may be rented or leased under order of the proper court: **Provided further,** That all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian Territory.

(Sections 2, 3 and 11 of the Act Approved May 27, 1908.)
(35 Stat. L. 312.)

(Sec. 2.) That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of

bate court if a minor or incompetent, for a period of five years, without the privilege of renewal: That leases of restricted lands for oil, gas or other purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of five years, may be made, with the approval of any of the Interior, under rules and regulations by the Secretary of the Interior, and not otherwise **provided further**, That the jurisdiction of the courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing, and the term minor or minors, as used in this Act, shall include all males under the age of twenty-one and all females under the age of eighteen years.

) That the rolls of citizenship and of freedmen of the Five Civilized Tribes, approved by the Secretary of the Interior, shall be conclusive evidence as to the quantum of blood of any enrolled citizen or freedmen of said tribes, and of no other persons to determine questions arising under this Act and the enrollment records of the Comptroller of the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freed-

oil, gas, or other mineral lease entered into by any allottee prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall not be rendered invalid by this Act, but the same shall be subject to the approval of the Secretary of the Interior as if such Act had not been passed: **Provided**, That the owner of any allotted land from which restrictions are removed by this act, or have been removed by previous Acts of Congress, or by the Secretary of the Interior, or may be removed under and by authority of any Act of Congress, shall have the power to cancel and annul any mineral lease on said land whenever the owner of said land and the owner or owners of

the lease thereon agree in writing to terminate said lease and file with the Secretary of the Interior, or his designated agent, a true copy of the agreement in writing canceling said lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the county where the land is situate.

(Sec. 11.) That all royalties arising on and after July first, nineteen hundred and eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter belong; and no such lease shall be made after said date except with the allottee or owner of the land: **Provided**, That the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June thirtieth, nineteen hundred and eight.

OIL AND GAS AND OTHER MINERAL LEASES.

§ 985. **How to Procure Approval of Mineral Lease.**

(1.) Oil and gas and other mineral leases requiring the approval of the Secretary of the Interior shall be made for a period of five (now ten) years from the date of the approval thereof by the Secretary of the Interior and as much longer thereafter as oil, gas, or other mineral is found in paying quantities; all leases shall be executed upon forms prescribed herein (procure blanks from Superintendent Union Agency). See Sec. 1 of amendments of Feb. 6, 1911, Sec. 1074.

§ 986. **Leases in Quadruplicate.**—(2.) All leases shall be in quadruplicate, and, with the papers required, shall be filed within thirty days from and after the date of execu-

y the lessor with the United States Indian agent at Agency, Muskogee, Okla. (See Amend., Sec. 1068.)

37. Filing Constructive Notice.—(3.) The act of Congress approved March 1, 1907 (35 Stat. L. 1015), pro-

vide filing heretofore or hereafter of any lease in the name of the United States Indian agent, Union Agency, Muskogee, Indian Territory, shall be deemed constructive notice.

38. Lease After Selection of Allotment.—(4.) Allottees are permitted to execute leases after formal application for allotment has been accepted.

39. Not More Than 4800 Acres to One Person or Firm.

No person, firm, or corporation will be allowed to acquire within the territory occupied by the Five Civilized Tribes, for the purpose of producing oil or gas, more than 4800 acres of land in the aggregate.

40. Application for Approval.—(6.) Oil and gas leases shall be accompanied, when filed, with application, under oath, on blank prescribed, Form B; leases for mineral purposes shall be accompanied by application on Form L. These applications shall state specifically what other persons, firms, or corporations the lessee is interested in, either directly or indirectly, in oil or gas or mineral leases of lands in the Five Civilized Tribes. The Department in every case reserves the right at any time to make further inquiry as to the standing and business of any prospective lessee.

41. Application of Corporation.—(7.) Where the lessee is a corporation, its first application must be accompanied by a sworn statement of its proper officer, showing: (a) the total number of shares of the capital stock actually

issued and specifically the amount of cash paid into the treasury on each share sold; or, if paid in property, state kind, quantity, and value of the same paid per share.

“Of the stock sold how much per share remains unpaid and subject to assessment.

“How much cash the company has in its treasury and elsewhere, and from what sources it was received.

“What property, exclusive of cash, is owned by the company, and its value.

“What the total indebtedness of the company is, and specifically the nature of its obligations.”

Subsequent applications of corporations should show briefly the aggregate amounts of assets and liabilities.

§ 992. **Application of Corporation, Requirements.**—(8.) Corporations, with their first application, shall file one certified copy of articles of incorporation, and, if a foreign corporation, evidence showing compliance with local corporation laws; also a list showing officers and stockholders, with postoffice addresses and number of shares held by each. Statements of any changes of officers or any changes or additions of stockholders shall be furnished to the Indian agent on January 1 of each year, and at any other time when requested; affidavits may be required of individual stockholders setting forth in what companies or with what persons or firms they are interested in oil or gas mining leases or lands in the Five Civilized Tribes, and whether they hold such stock for themselves or in trust. Evidence shall also be given—in a single affidavit (see Form E)—by the Secretary of the company, or by the president, showing authority of officers to execute lease, bond, and other papers.

§ 993. **Application, Where Lessor a Minor.**—(9.) Where lessor is a minor there must be filed—

“Certified copy of letters of guardianship.

Certified copies of court orders authorizing and confirming lease.

Proof of age or minor, preferably affidavit of parent or next of kin. (Note: Sec. 3 of Act of May 27, 1908), now makes enrollment records conclusive evidence as to age and quantum of Indian blood, therefore affidavits not longer required.)"

994. Affidavit of Indian Lessor.—(10.) Lessee must execute and file with each lease an affidavit of the Indian owner, made before a United States commissioner, Indian agent, county or district judge, Federal judge or clerk of a general court, showing that lease was understood by the owner, and what, if any, the bonus agreements are, etc. on Form D prescribed, which also covers lessee's affidavit of no development, amended by Sec. 14, Regulations June 20, 1908, Sec. 994.) Note: The Superintendent of Indian Affairs by Departmental order of July 1, 1907, is required to investigate and report upon the adequacy of bonus paid for each lease.

995. Lease of Undivided Inherited Land.—(11.) Except to prevent loss or waste, leases of undivided inherited lands will be approved, only in cases where all the heirs are named in the lease, and must be accompanied by satisfactory proof that the lessors are the only heirs of the deceased allottee. Minor heirs can lease or join adult heirs in leasing through guardians under order of court. Proof of ownership shall be given upon Form F, prescribed. (See amended June 18, 1915, Sec. 1101.)

If probate or other court proceedings have established heirship in any case, or the land has been partitioned, a certified copy of final order, judgment, or decree of the court will be accepted in lieu of Form F, mentioned above.

996. Oil and Gas Lease, Bond.—(12.) Lessees are required to furnish with each oil or gas lease, to be filed at

the time the lease is presented, a bond upon Form C, with two or more sureties, or with a surety company duly authorized to execute bonds. Such bond shall be in amount as follows: For leases covering 40 acres and less than 80, \$1,000; for those covering 80 acres and less than 120, \$1,500; for those covering 120 acres and not more than 160 acres, \$2,000; and for each 40-acre tract or fractional part thereof above 160 acres an additional amount of \$500: **Provided, however,** That a lessee shall be allowed to file one bond, Form H—series 1908, covering all leases to which they are or may become parties instead of a separate bond in each case, said bond to be in the penal sum of \$15,000, covering all such leases to which they now are or may hereafter become parties, in lieu of the separate bond as above prescribed.

The right is specifically reserved to increase the amount of any such bond above the sum named in any particular case where the Secretary of the Interior deems it proper to do so. Bonds covering other mineral leases shall be in such sum as may be fixed by the Secretary of the Interior. (See Amend. Nov. 20, 1915, Sec. 996.)

§ 997. **Government May Require Additional Information.**—(13.) The Indian agent at Union Agency, or other Government officer having the matter in charge or under investigation, may, at any time, either before or after approval of a lease, call for and secure any additional information desired to carry out the purpose of these regulations, and such information shall be furnished within the time specified in the request therefor.

§ 998. **Failure to Comply With Requirements.**—(14.) When a lessee fails to furnish, within the time specified, papers necessary to put his lease and bond in proper form for consideration, the Indian agent at Union Agency is directed to forward such lease immediately for disapproval.

999. Royalties on Oil.—(15.) a. The minimum rate of royalty on oil on and after May 1, 1908, shall be 12½ per cent of the gross proceeds of the oil produced from said premises, and payment shall be made at the time of or removal of oil.

Any lease approved, delivered, or assigned since October 14, 1907, wherein the royalty on oil is less than 12½ per cent, may, with the approval of the Secretary of the Interior, be subject to all rights, privileges, conditions, and provisions of the lease form approved and issued by the Secretary of the Interior April 20, 1908, the same as if written therein at length, and any of the terms and conditions in an executed lease in conflict with the terms and conditions of said lease form of April 20, 1908, will be revoked and annulled, on and in consideration that owner of said lease has stipulated in writing to increase the royalty on oil therein to 12½ per cent of the gross proceeds. (Procure form of stipulation from Superintendent, Union Agency.)

If the owner of any lease mentioned above in b shall fail to stipulate in writing for the increase of royalty to 12½ per cent, the rate of royalty for said lease shall, on and after May 1, 1908, be 12½ per cent, and said lease shall not be free from any further increase in the rate of royalty on oil, but shall not have the rights, privileges, conditions, and provisions of the lease form approved and issued by the Secretary of the Interior April 20, 1908, until said stipulation is made.

If the owner of a lease delivered prior to October 14, 1907, wherein the royalty on oil is less than 12½ per cent, stipulates in writing within eight years from the date of delivery of said lease to increase the royalty on oil for said lease to 12½ per cent, and shall show that he has notified the lessor in writing, said lease shall thereafter have all the rights, privileges, conditions, and terms of the lease form approved and issued April 20, 1908, the same as if written therein at length.

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length, and any of the terms and conditions of said lease as originally executed in conflict with the terms and conditions of said lease form of April 20, 1908, will thereby be revoked and canceled.

e. In all cases notice in writing must be given by owner of lease to owner of leased land of intention to increase royalty on oil and, in consideration thereof, obtain the benefits of the lease form approved by the Secretary of the Interior April 20, 1908, and stipulation of owner of lease agreeing to increase of royalty on oil must be filed with the Secretary of the Interior on or before eight years from date of execution of lease.

f. Any lease heretofore approved, wherein the royalty on oil is $12\frac{1}{2}$ per cent or more, may, on terms and conditions to be approved by the Secretary of the Interior, at any time within eight years from date of the lease, and before removal of restrictions, be made subject to the terms, conditions, rights, and privileges of the lease form approved by the Secretary of the Interior April 20, 1908, as though the terms of said lease form were written in and made part of such lease.

§ 1000. Royalties on Gas.—(16.) From and after July 1, 1907, the royalty on gas-producing wells, irrespective of whether the leases were heretofore or shall hereafter be approved, shall be as follows:

Where the capacity of a well is tested at 3,000,000 cubic feet or less per day of twenty-four hours, \$150 per annum in advance, and where the capacity is more than 3,000,000 cubic feet per day, \$50 for each additional 1,000,000 cubic feet or major fraction thereof. (Changed to flat rate. See amended regulations of Feb. 6, 1911, Sec. 1070.)

The capacity of wells shall be determined, under the supervision of the Secretary of the Interior, before utilized and annually thereafter (now semi-annually under lease

providing graduated scale gas royalty as per order of Sept. 2, 1909), the amount of royalty in such determination.

lessee desires to retain the gas-producing privilege, but not to utilize the gas for commercial purposes, shall pay an annual rental of \$50 (now \$100.00. regulations of Feb. 6, 1911, Sec. 1070) in addition from the date of discovery of gas, and to thirty days therefrom.

uses of emergency, which shall not exceed ten per cent than 75 per cent of the capacity of any gas utilized.

date of discovery of gas wells and the beginning of production must be properly furnished in the form of statement.

shall produce both oil and gas, or gas alone in quantities, or gas in any quantity from a stratum which produces oil or salt water to such an extent that it is not for domestic purposes, lessee may dispose of the gas at the following minimum rates:

First, 5 cents per foot of drilling done, or a dollar per day.

Second, \$1 per month for each well pumped.

Third, for gas purposes, 1 cent per thousand cubic feet, or one cent per hundred standard meter.

Fourth, if gas is disposed of lessee will pay monthly, in the same manner as other royalties are paid, supported by receipts, such percentage of the gross proceeds received from the sale of gas as is paid under the same lease for oil."

Royalty on Coal.—(17.) The royalty on coal shall not be less than 8 cents per ton of 2,000 pounds on mine from which it is taken from the mines, including what is called "slack."

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§ 1002. Royalty on Asphalt.—(18.) The royalty on asphaltum shall not be less than 10 cents per ton of 2,000 pounds on crude asphalt, or 60 cents per ton on refined asphalt.

§ 1003. Royalty on Minerals Not Mentioned.—(19.) Application for leasing of gold, silver, iron, shale, limestone, or other mineral not specified in these regulations may be submitted, and the royalty thereon shall be fixed after a special investigation in each particular case by the Secretary of the Interior.

§ 1004. Royalties—to Whom Paid.—(20.) All royalties, rents, or payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to the United States Indian Agent at Union Agency, Muskogee, Okla., or to such other person as may be designated by the Secretary of the Interior, for the benefit of the various lessors, or, in cases of minors and incompetents, shall be deposited as hereinafter specified. (See amendment of July 23, 1910, as to minors and incompetents, p. 31.) No royalties on such leases shall be paid by the lessee direct to the lessors or their representatives.

All remittances to the United States Indian agent at Union Agency shall be made in New York, Chicago, or St. Louis exchange, except that where the same cannot be procured, postoffice or express money order will be accepted. (Note: Make all remittances payable to Cashier Union Agency.)

Royalty on oil, coal, or other minerals produced in each month (except yearly payments on gas wells as herein mentioned) shall be paid on or before the 25th day of the month next succeeding.

§ 1005. Purchaser May Pay Royalty.—(21.) With the consent of the United States Indian agent, lessees may

make arrangements with the purchasers of oil for the payment of the royalty to the United States Indian agent by each purchaser, but such arrangement, if made, shall not operate to relieve lessees from the responsibility for the payment of the royalty, should such purchaser fail, neglect, or refuse to pay the royalty when it becomes due.

Where lessees avail themselves of this privilege, division orders, permitting the pipe-line companies or other purchasers of the oil to withhold the royalty interest, shall be executed and forwarded to the Indian agent for approval before wells are brought in, as pipe-line companies are not permitted to accept or run oil from Indian leases until after the approval of division orders showing that the lessee has lease regularly approved and in effect.

§ 1006. **Royalties Where No Production.**—(22.) In oil and gas leases until a producing well is completed on leased premises and in all other mineral leases advance royalty shall be paid annually in advance from the date of the lease (now date of approval of lease applies to leases drawn in forms adopted by regulations of April 20, 1908, also subsequent amendments to said regulations), as follows: 15 cents per acre per annum for the first and second years; 30 cents per acre per annum for the third and fourth years; 75 cents per acre for the fifth year (now \$1 per acre per annum after the fifth year); and in the case of mineral leases other than for oil and gas, 75 cents per acre annually thereafter; the sums thus paid to be credited on the stipulated royalties. See amended regulations of Feb. 6, 1911, Sec. 1073, and June 29, 1911, Sec. 1076.)

The advance royalty for the first year shall be tendered at the time of the filing of the lease in the office of the United States Indian agent at Union agency.

On all mineral leases other than for oil and gas, when the annual advance royalty becomes due on a leased tract from which minerals are being produced, the lessee will not be


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required to pay the advance royalty until the royalty production during the month within which the advance royalty falls due is accounted for; and if royalty on production equals or exceeds the advance royalty, it will be accepted as covering both items, but if it does not equal the advance royalty due, the lessee shall include the difference with his payment on production.

§ 1007. Rental for Failure to Drill Within Year.—(23.) An oil or gas lessee shall drill at least one well on leasehold within twelve months from the date of the approval of the lease by the Secretary of the Interior, or may delay drilling said well for not exceeding five years (now ten years) from the date of such approval by paying to the United States Indian agent, Union Agency, Muskogee, Okla., for the use and benefit of lessor (subject to the limitations and conditions in said lease contained), in addition to said advance royalty the sum of \$1 per acre, per annum, for each year the completion of such well is delayed, payable on or before the end of each year. The lessee may be required to drill and operate wells to offset paying wells on adjoining tracts and within 300 feet of the dividing line. (See amendments to regulations of Feb. 6, 1911, Sec. 1074) and June 29, 1911 (Sec. 1078).

§ 1008. Royalty Reports.—(24.) Sworn reports accompany each royalty remittance shall be made by each lessee within twenty-five days from the close of each month for the month preceding, covering all operations, whether there has been production or not, except that where division orders have been approved and the royalty paid by the pipe-line company or other purchaser of oil, lessees need not make monthly reports direct.

A lessee may include within one sworn statement leases upon which there is no production or upon which dry holes have been drilled.

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Quarterly reports, whether or not oil royalty is paid by pipe-line company or other purchaser, shall be made by each lessee within twenty-five days after December 31, March 31, June 30, and September 30 of each year, upon forms provided, showing manner of operations and total production during such quarter.

Sworn reports of gas wells shall be made both when discovered and when utilized.

§ 1009. Royalties, Rents, Etc., Due Minors.—(25.) All royalties, rents, or payments accruing under any lease made for or in behalf of any minor or incompetent shall be deposited by the Indian agent or other Government officer to whom paid, to the credit of the guardian or curator of such minor or incompetent, in some national bank or banks designated by the Commissioner of Indian Affairs, and may be withdrawn therefrom by such guardian or curator, with the consent of the United States Indian agent, in sums not exceeding \$50 per month unless otherwise ordered by the court. Sums in excess of \$50 per month may be withdrawn on order of the proper court and not otherwise. Such designated banks shall furnish satisfactory surety bonds, to be approved by the Secretary of the Interior, guaranteeing the safe care and custody of the funds so deposited. (Amended July 23, 1910. Sec. 1067.) (Amended Nov. 29, 1912. Sec. 1084.)

(Superseded by Regulations Approved Oct. 20, 1915,
Secs. 1107-1139.)

§ 1010. No Operation Before Approval.—(26.) Operations upon land covered by any lease requiring the approval of the Secretary of the Interior are not permitted until after such lease is regularly approved, delivered and official notice thereof given. (See Amend. May 12, Sec. 089.)



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(27.) Lessees shall not be allowed to drill within 2 feet of the division lines between lands covered by the leases and adjoining lands, except in cases where wells on adjoining tracts are drilled at a less distance, in which case lessees may offset such wells by drilling at an equal distance from the line; and provided further, that in cases where the dimensions of leased tracts do not permit drilling 200 feet from the lines, wells may be drilled at point halfway between lines which are 400 feet or less apart.

§ 1011. Lessor or Agent to Have Access to Premises.

(28.) Lessees shall agree to allow the lessors and the agents, or any authorized representative of the Interior Department, to enter, from time to time, upon and into all parts of the leased premises for the purposes of inspection and shall further agree to keep a full and correct account of all operations and make reports thereof, as herein required, and their books and records showing manner of operations and persons interested shall be open at all times for the examination of such officers of the Department as shall be instructed in writing by the Secretary of the Interior to make such examination.

§ 1012. Use of Natural Gas for Outside Illumination-Regulations.—

(29.) Lessees or operators using natural gas for outside illumination, or in connection with operations carried on under approved oil and gas leases covering lands within the territory of the Five Civilized Tribes, are required to use the device known as a "Storm burner," or other burner consuming not more than 15 cubic feet of gas per hour. Such lamps shall not be lighted earlier than 6 o'clock in the afternoon and shall be extinguished not later than 8 o'clock each morning, and not more than four such lights shall be used in drilling one well. Stopcocks shall be placed on all pipes used for conveying gas to burning devices of any character, and the gas shall be shut off

when not in use. Boilers using gas for fuel shall have smokestacks or chimneys not less than 12 feet in

Waste, Penalty.—(30.) Operators upon ap-
peases within the territory of the Five Civilized
are required to use all possible diligence to prevent
unnecessary waste of natural gas. Operators in pos-
session of any gas well shall, within five days after gas-
sand or rock is penetrated, shut in and confine
the well except so much of the product as can
be produced. Lessees or operators shall pay to the United
Indian agent at Union agency, Muskogee, Okla., the
sum of \$10 per day for each well during the time such well
is not shut in or allowed to go uncontrolled or uncared for, un-
less accidents excepted, and a failure on the part of
lessees or operators to prevent a waste of gas will fur-
ther subject the lease to cancellation by the Secretary of the
Interior after due notice. (See Amendment May 12, 1913.
-1093.)

Where oil-bearing strata are found at a greater
depth than gas-bearing sand, packers and two strings of
pipe shall be used, so that waste of the gas from the first
string shall be prevented, thereby securely shutting in and
producing the gas.

Abandoning Well—Regulations.—(31.) A lessee
of crude oil or natural gas within the territory of
the Five Civilized Tribes shall at time of abandoning a
well plug the same so as to effectually shut off all
flow from the oil-bearing stratum, or in the manner re-
quired by the laws of the State of Oklahoma. Upon the
abandonment of a well in which no oil or gas bearing
strata are encountered, lessee shall fill the bottom of the
well for at least 25 feet with sand pumpings, gravel,
or crushed rock; immediately on top of such filling shall


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be seated a dried pine plug of not less than 2 feet length and of a diameter of not less than one-fourth less than the inside diameter of the casing; upon this another filling of at least 25 feet of sand pumpings or mineral substance shall be made, upon which there shall be seated a dried pine plug, and the well again filled at least 25 feet with similar filling material; after the casing has been drawn from such well there shall be immediately seated at the point where such casing was seated a cast iron ball, or tapered wooden plug at least 2 feet in length and diameter of which ball or the top of which plug shall be greater than that of the hole below the point where the casing was seated, and above such ball or plug such well shall be solidly filled with the aforesaid filling material to a distance of at least 50 feet; and the hole shall then be closed or marked. Or such abandoned well may be plugged in the manner required by the laws of the State of Oklahoma. Every lessee or operator shall pay to the United States Indian agent, Union Agency, Muskogee, Oklahoma, for the use and benefit of lessor, the sum of \$10 per day for each well drilled during the time such well remains capped or unplugged as herein provided.

§ 1015. Tankage.—(32.) Lessees shall provide tanks of suitable shape for accurate measurement of production, in which all production of crude oil shall be conducted from wells through pipes or other closed connections. If a lease covers a homestead and surplus lands and such surplus lands are sold, separate tankage must be supplied for the homestead tracts and oil extracted therefrom measured separately. If the contents of such tanks are disposed of in any manner other than to a purchaser to whom a drilling order has been approved, or removed from the leased lands, accurate measurement shall first be made and the production reported and royalty thereon paid to the United States Indian agent in the usual manner.

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In cases of emergency, where the capacity of new wells is such that lessees are unable immediately to provide proper tankage, production may be conducted to open ponds or earthen tanks, but in no case shall any embankment exceed 15 feet in height. Such ponds or tanks shall be so constructed as to minimize the danger of overflow or collapse, or damage to crops or adjacent property.

Crude oil run into earthen tanks in cases of emergency, as indicated above, shall not be allowed to remain in such earthen tankage for a longer period than fifteen days, except that where lessees desire to so store their oil, and after has been properly gauged and royalty paid thereon, such tankage may be used when so constructed as to remove all reasonable danger of fire, overflow, and damage to other property. The right is reserved to supervise the construction of earthen tanks where deemed necessary.

Oil to be temporarily held or stored in earthen tankage must be run from the wells into receiving tanks capable of accurate measurement, and then gauged before being turned to earthen tankage.

§ 1016. Sale or Removal of Oil.—(33.) Oil shall not be sold to a pipe-line company until a division order is filed as hereinbefore provided. Should the lessee desire to sell oil or remove it from the leased premises in any other manner, each sale or removal shall not be made until authorized by the Indian agent. Lessee or his representative shall actually be present when oil taken under division orders is run by pipe-line companies, and lessee shall be responsible for the correct measurement and report of oil so run; otherwise, the approval of division order may be revoked.

§ 1017. Material for Rigs, Etc., From Allotted Land.—(34.) Whenever operators desire to secure from allotted lands timber for rigs, transmission of power, foundations, or for any other purpose, they must first obtain the con-



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sent of the allottee and properly compensate the owner of the timber therefor.

§ 1018. **Log of Well to Be Kept.**—(35.) Lessees : keep a true and correct record of each well drilled, including a complete log made at the time of drilling, and, whenever requested by properly authorized officers of the Interior Department, shall furnish a copy of such record log, duly certified.

§ 1019. **Lessees to File Plat of Leases When Requested.**—(36.) Lessees are required, when so requested, to file a plat of their leases showing exact locations of all producing oil or gas wells, dry wells, proposed locations, tanks, pump houses, pumping stations, etc. Such plats, when desired, should also show locations of dry or producing wells upon adjoining tracts, so far as known to lessee.

§ 1020. **No Tank or Well Within 200 Feet of Building.**—(37.) Lessees are not permitted to locate either tanks or wells within 200 feet of any building used as a dwelling, granary, or shelter for stock, except where it is usually necessary to offset wells upon adjoining tracts.

§ **Disposal of Refuse.**—(38.) All "B. S." or refuse from tanks or wells shall be drained off into proper receptacles, at a safe distance from the tanks, wells, or buildings to the end that it may be disposed of by being burned or transported from the premises; but in no case shall it be permitted to flow over the surface of the land to the injury of any surrounding property or to the pollution of any stream. Salt water or any other product from any oil or gas well, not marketable, shall not be permitted to run into any tanks or pools used for watering stock.

§ 1021. **Assignments of Leases.**—(39a.) No lease or any interest therein, by working or drilling contract or otherwise

or the use of such lease, shall be sublet, assigned, or transferred, directly or indirectly, without the consent of

Secretary of the Interior; and if at any time the Secretary of the Interior is satisfied that the provisions of any lease, or that any of the regulations heretofore or that may hereafter prescribed have been violated, he reserves authority to terminate the lease in the manner therein provided, and the lessor shall then be entitled to take immediate possession of the land.

b. All leases hereafter approved, or any interest therein, may be assigned or transferred with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the existing rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned on the faithful performance of the covenants and conditions of said lease. (Modified by Departmental orders of July 14, 1909, and July 2, 1910, which provide for the approval of assignments, subject to the specific condition that the price basis for the computation of oil royalties must be determined by the Secretary of the Interior.)

c. In all leases heretofore approved where the royalty on oil is now less than $12\frac{1}{2}$ per cent, if the lessee at any time within eight years from the date of the lease shall consent to increase said royalty on oil to $12\frac{1}{2}$ per cent of the gross proceeds, said lease shall thereafter be subject to and have all the rights, privileges, and terms in the lease then approved by the Secretary of the Interior April 20, 1888, and be assignable as provided in b hereof.

d. If the present owner of a lease heretofore approved, in which the royalty on oil is less than $12\frac{1}{2}$ per cent, will stipulate to increase such royalty to $12\frac{1}{2}$ per cent of the gross proceeds produced, and the owner of said lease should hereafter desire to transfer or assign the same, then said owner shall make application to the Indian agent, stating


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the reasons for the proposed assignment, and when such application is approved by said agent, formal assignment papers in quadruplicate may be entered into and filed with the Indian agent for transmission to the Secretary of the Interior. The acceptance by the proposed assignee and consent of the surety company shall be filed on the form prescribed herein, "G." Financial showing and other papers as required from an original lessee must be furnished by the assignee, and the parts of the lease distributed to the lessee and lessor shall be returned for endorsement. No assignment under this regulation (39d) shall be allowed without notice first having been given to the lessor of the application to assign.

§ 1022. Cancellation.—(40) Where a lessee makes an application for the cancellation of an approved lease, all royalties or rentals due up to the date of the application for cancellation must be paid before such application will be considered, and the parts of the lease delivered to the lessor and the lessee should be surrendered. (Amended by Departmental order of January 11, 1909, which provides that the lessee and surety shall be held for payment of all royalties and rentals due to the date of completion of application for cancellation, which, if the lease has been recorded, also includes filing of a properly executed and recorded release of record, and payment to Superintendent Union Agency \$1.00 cancellation fee if lease so stipulates.)

Note:—For proper method of terminating Departmental leases covering lands now unrestricted, see also Sec. 3, Act of Congress of May 27, 1908 (35 Stat. L. 312).

§ 1023. Forms.—(41.) Applications, leases, and other papers must be upon forms prepared by the Department, and upon application the Indian agent at Muskogee, Okla., will furnish prospective lessees with such forms at a cost of \$1.00 per set.

SET 1.

- Form A. Oil and gas lease
- Form B. Application for oil and gas lease, including financial showing.
- Form C. Bond.
- Form D. Affidavit of Indian lessor, proof of bonus, etc.
- Form E. Authority of officers to execute papers.
- Form F. Proof of heirship.
- Form G. Assignment.
- Form H. \$15,000 bond.
- Form I. Stipulation increasing oil royalty and extending term of lease.
- Form J. Stipulation increasing oil royalty, extending term of lease, and rescinding regulations of October 14, 1907.
- Form K. Lessor's consent to extension of term of lease.

SET 2.

- Form L. Application for mineral lease, other than oil and gas.
- Form M. Coal and asphalt lease.
- Form N. Lease for minerals, other than oil and gas or coal and asphalt.
- Form O. Agriculture lease.
- Form P. Grazing lease.
- Form Q. Affidavit of personal surety to accompany bond.

1024. **Leases Upon Land From Which Restrictions Been Removed At Time of Application.**—(42a.) On after January 1, 1908, all leases of any description ever executed by an allottee of the Five Civilized Tribes on land from all of which the restrictions against alienation had been removed before such execution, may be accepted without any provision for reference to or supervision by the Secretary of the Interior or any official of the Department of the Interior; and the Indian agent shall refuse to accept for consideration any lease executed after January 1, 1908, covering land from all of which restrictions had been removed before such execution.

§ 1025. **Leases Upon Land From Which Restrictions Have Been Removed Since Execution.**—b. All leases executed before the removal of restrictions against alienation, on land from all of which restrictions against alienation shall be removed after such execution, if such leases contain specific provision for approval by the Secretary of the Interior, whether now filed with the Department or presented for consideration hereafter, will be considered and acted upon by this Department as heretofore.

§ 1026. **Leases on Land From Which Restrictions Are Removed After Approval.**—c. All leases executed and approved heretofore or hereafter on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provisions authorizing supervision by this Department, shall, after such removal of restrictions against alienation, be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior in said leases shall cease, and all payments required to be made to the United States Indian agent shall thereafter be made to lessor or the then owner of said land, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to such leased land from which said restrictions are removed, except where a bond is required in said lease it shall be furnished with responsible surety, unless the giving of said bond is waived by lessor or the owner of the land. (Amended August 12, 1908. See. 1065.)

§ 1027. **Leases Where Restrictions Upon Part of Land Have Been Removed.**—d. In event restrictions are removed from a part of the land included in a lease for oil, gas, or other mineral purposes, the entire lease shall continue subject to approval and supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the Indian agent until such time as the lessor and lessee shall

ish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas, or mineral upon the restricted land separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior, provided that the unrestricted land shall be relieved from such supervision as in the rules or regulations provided.

1028. Regulations Retroactive As Well As Prospective.
43.) These regulations shall be applicable to leases heretofore made and approved, as well as those hereafter entered into, except as otherwise herein provided.

(Re-written and Amended Under Act May 27, 1908. See
Sections 15-17 of Regulations of June 20, 1908,
Sections 1049, 50, 51.)

1029. Agricultural Leases.—(44.) Allottees other than full blood of the Creek and Cherokee nations who desire to lease for terms longer than five years for agricultural purposes and one year for grazing purposes are required under existing law to have their leases approved by the Secretary of the Interior. Agricultural and grazing leases for shorter terms made by citizens other than full bloods do not require approval.

Allottees enrolled as full-blood members of the Choctaw, Chickasaw, Creek, Cherokee, and Seminole tribes can lease their allotments for a period longer than one year only with the approval of the Secretary of the Interior, and their homesteads only in case of their inability, on account of infirmity or age, to work or farm them. And where leases are submitted for approval covering the homestead land the affidavit of a physician or other satisfactory evidence must be furnished showing the inability of the allottee to work the farm his homestead and the reason therefor.

Agricultural leases from full-bloods will not be made for



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a longer period than five years. Agricultural and grazing leases made under these regulations shall be made upon the forms prescribed herein.

In case it is desired to lease both the homestead and surplus of the full-blood allottee, separate leases shall be submitted.

§ 1030. Requirements for Approval.—(45.) All leases shall be in quadruplicate, and, with the papers required, shall be filed within thirty days from and after the date of execution with the United States Indian agent at Union Agency, Muskogee, Okla.

§ 1031. Indian Agent to Make Investigation.—The Indian agent will make a full investigation to ascertain whether an allottee comes within the purview of the law and in case of a lease upon homestead lands whether it will be to the best interests of the allottee to lease such homestead, and whether the consideration named in the lease is a fair one. He will also ascertain the character and responsibility of the prospective lessee.

§ 1032. Bond of Lessee.—(46.) Lessees shall be required to furnish a bond executed by two or more sufficient sureties, each of whom must justify under oath to an amount equal to the entire rental, guaranteeing the payment of all rents at the time and in the manner specified in the lease and the performance of all covenants and agreements named in the lease.

§ 1033. Regulations for Oil and Gas Leases Applicable.—(47.) The lessee, when requested, shall furnish any additional information required by the Department. The general rules herein prescribed for oil and gas leases will be followed so far as applicable to agricultural and grazing leases, particularly as to corporations.

1034. General Supervision.—(48.) The enforcement of these regulations in the field and the general supervision of oil and gas operations thereunder shall be under the direction of the Commissioner to the Five Civilized Tribes in Oklahoma after July 1, 1907.

C. F. Larrabee,
Acting Commissioner of Indian Affairs.

Department of the Interior,
Washington, D. C., April 20, 1908.

Approved: James Rudolph Garfield, Secretary.

LEASING AND REMOVAL OF RESTRICTIONS.
REGULATIONS JUNE 20, 1908.

The following regulations are hereby prescribed for the purpose of carrying into effect those provisions of the Act of Congress approved May 27, 1908 (Public No. 140), as amended herein.

1. The Commissioner to the Five Civilized Tribes is authorized with the general supervision and the enforcement of these regulations.

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1035. Section 6 of Act of May 27, 1908, Quoted.—

6.) That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specially provided by law, be subject to the jurisdiction of probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma who shall be citizens of that State or now domiciled therein as he may deem necessary to inquire into and investigate the conduct of administrators or curators having in charge the estates of such

minors, and whenever such representative or representatives of the Secretary of the Interior shall be of the opinion that the estate of any minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator said representative or representatives of the Secretary of the Interior shall have power and it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.

And said representatives of the Secretary of the Interior are further authorized and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made, and at the request of any allottee having restricted land he shall, without charge, except the necessary court and recording fees and expenses, if any, in the name of the allottee, take such steps as may be necessary, including the bringing of any suit or suits and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encum-

ance of any kind or character, made or attempted to be made or executed in violation of this Act or any other Act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands.

Supplemental to the funds appropriated and available for expenses connected with the affairs of the Five Civilized Tribes, there is hereby appropriated for the salaries and expenses arising under this section, out of any funds in the Treasury not otherwise appropriated, the sum of ninety thousand dollars, to be available immediately, and until July first, nineteen hundred and nine, for expenditure under the direction of the Secretary of the Interior: **Provided**, that no restricted lands of living minors shall be sold or leased, except by leases authorized by law, by order of the court or otherwise.

And there is hereby further appropriated, out of any moneys in the Treasury not otherwise appropriated, to be immediately available and available until expended as the Attorney General may direct, the sum of fifty thousand dollars, to be used in the payment of necessary expenses incident to any suits brought at the request of the Secretary of the Interior in the Eastern judicial district of Oklahoma:

Provided, That the sum of ten thousand dollars of the above amount, or so much thereof as may be necessary, may be expended in the prosecution of cases in the western judicial district of Oklahoma.

Any suit brought by the authority of the Secretary of the Interior against the vendee or mortgagee of a town lot, against whom the Secretary of the Interior may find upon investigation no fraud has been established, may be dismissed and the title quieted upon payment of the full balance due on the original appraisalment of such lot: **Provided**, That such investigation must be concluded within six months after the passage of this act.

Nothing in this act shall be construed as a denial of the right of the United States to take such steps as may be


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necessary, including the bringing of any suit and the prosecution and appeal thereof, to acquire or retain possession of restricted Indian lands, or to remove cloud therefrom or clear title to the same, in cases where deeds, leases or tracts of any other kind or character whatsoever have or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon alienation thereof; such suits to be brought on the recommendation of the Secretary of the Interior, without cost or charges to the allottees, the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act.

§ 1036. District Agents.—(2.) Local representatives appointed under the above quoted section 6, shall be known officially as "District Agents," and located in the various districts named herein comprising that part of the State of Oklahoma occupied by the Five Civilized Tribes. Such additional local representatives and the necessary assistants including supervision, that may at any time be deemed necessary by the Secretary of the Interior to carry out the provisions of said section 6 and these regulations will be appointed or authorized. Such District Agents shall report to and act under the direction of the United States Indian Agent, Union Agency.

**DESCRIPTION OF DISTRICTS AND LOCATION OF OFFICES
OF THE DISTRICT AGENTS ON
MAY 1, 1912.**

- District No. 1: Office at Vinita, comprising Craig, Mayes, Delaware and that part of Ottawa County within the Cherokee Nation.
- District No. 2: Office at Nowata, comprising Washington, Nowata and Rogers Counties.
- District No. 3: Office at Sapulpa, comprising Tulsa and Nowata Counties.

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- No. 4: Office at Okmulgee, comprising Okmulgee and Okfuskee Counties.**
- No. 5: Office at Muskogee, comprising Wagoner, Muskogee and McIntosh Counties.**
- No. 6: Office at Westville, comprising Cherokee, Adair and Sequoyah Counties.**
- No. 7: Office at Poteau, comprising Haskell and LeFlore Counties.**
- No. 8: Office at McAlester, comprising Pittsburg and Latimer Counties.**
- No. 9: Office at Holdenville, comprising Hughes and Seminole Counties.**
- No. 10: Office at Atoka, comprising Pontotoc, Coal and Atoka Counties.**
- No. 11: Office at Pauls Valley, comprising McClain, Garvin and Murray Counties.**
- No. 12: Office at Chickasha, comprising that part of Grady, Stephens and Jefferson Counties within the Chickasaw Nation.**
- No. 13: Office at Ardmore, comprising Carter and Love Counties.**
- No. 14: Office at Madill, comprising Johnston, Marshall and Bryan Counties.**
- No. 15: Office at Hugo, comprising Choctaw and Pushmataha Counties.**
- No. 16: Office at Idabel, comprising McCurtain County.**

37. Duties of District Agents.—(3.) The offices of District Agents shall be open from eight thirty a. m., to m., each day, Sundays and legal holidays excepted, and all counsel and advice desired by allottees concerning deeds, leases or other instruments or matters relating to lands allotted to them shall be furnished by such free of charge. Each District Agent shall give his time to his official duties and shall not during his employment as such District Agent have any inter-

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est directly or indirectly in any transaction concerning leases covering lands of allottees or in the purchase or sale of any such lands regardless of whether the restrictions have or have not been removed. This prohibition, however, shall not apply to lands which such District Agents may have legally acquired before their employment.

§ 1038. Duties of District Agents — Continued.—(4.) Except when special circumstances require otherwise, each District Agent will be required to be at his office during Friday and Saturday of each week and in the field the remainder of the time, except Sundays and legal holidays, visiting different localities for the purpose of procuring information and making necessary investigations as the law provides and as he may be directed.

§ 1039. Duties of District Agents — Continued.—(5.) Each District Agent shall examine the records of each county within his district at least once in each month, and oftener if directed, for the purpose of ascertaining the nature of transactions involving all lands and estates of all minor allottees, and also of restricted lands of adults, and shall perform such other duties as may be required. They shall report to the United States Indian Agent at the end of each month the work performed during such period and special reports shall be made immediately of any apparently illegal transaction involving the estates or allotments of allottees.

§ 1040. Copies of Reports.—(6.) Copies of the reports of the District Agents to the Probate Courts as authorized by section 6 of the act, quoted, shall be forwarded to the Indian Agent.

§ 1041. Leases to Be Filed With District Agent.—(7.) Leases requiring the approval of the Secretary of the Interior should be filed with the District Agent of the district.

which the leased land is situate and by him forwarded for investigation with report and recommendation to the Indian Agent, Union Agency.

1042. Applications for Removal of Restrictions Filed with District Agent.—(8.) Applications by allottees of restricted land for the removal of restrictions shall be presented to the District Agent of the district in which the applicant resides, and such applications, after investigation including a personal interview with the applicant, shall be forwarded to the Indian Agent with report and recommendation.

LEASING.

) **Sections 1 to 43, inclusive, of the Revised Regulations of April 20, 1908, governing the leasing of allotted lands of members of the Five Civilized Tribes, with reference to oil, gas or other mineral leases are, with the following modifications, hereby repromulgated under and in accordance with and made applicable to the following quoted provisions of said Act, and shall, with said modifications, remain in full force and effect, and sections 44 to 48, inclusive, pertaining to agricultural and grazing leases, are revised as hereinafter shown.**

(Sections 2, 3 and 11 of the Act Approved May 27, 1908.)

1043. Sections 1 to 43, Regulations of April 20, 1908, repromulgated With Modifications—Sections 44 to 48 Revised.—(Sec. 2.) That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by the guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: **Provided,** That leases of restricted lands for oil, gas or other mining purposes, leases of restricted

homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: **And provided further,** That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this Act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.

(Sec. 3.) That the rolls of citizenship and of freedmen of the Five Civilized Tribes, approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedmen of said tribes and of no other persons to determine questions arising under this Act and the enrollment records of the Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman.

That no oil, gas or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this Act, but the same shall be subject to the approval of the Secretary of the Interior as if this Act had not been passed: **Provided,** That the owner or owners of any allotted land from which restrictions are removed by this Act, or have been removed by previous Acts of Congress, or by the Secretary of the Interior, or may hereafter be removed under and by authority of any Act of Congress, shall have the power to cancel and annul any oil, gas, or mineral lease on said land whenever the owner or owners of said land and the owner or owners of the lease thereon agree in writing to terminate said lease and file with the Secretary of the Interior, or his designated agent, a true copy of the agreement in writing canceling

lease, which said agreement shall be executed and acknowledged by the parties thereto in the manner required by the laws of Oklahoma for the execution and acknowledgment of deeds, and the same shall be recorded in the city where the land is situate.

Sec. 11.) That all royalties arising on and after July , nineteen hundred and eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter be paid; and no such lease shall be made after said date except with the allottee or owner of the land: **Provided**, That the interest of the Seminole Nation in leases or royalties existing thereunder on all allotted lands shall cease on June thirtieth, nineteen hundred and eight.

1044. All Leases to Be Presented to District Agent.—

(1.) To expedite necessary investigation and final action, leases should hereafter be presented to the District Agent of the district in which the leased land is situate for transmission to the Indian Agent at Union Agency.

1045. No Lease Extending Beyond Minority Except when Approved by Probate Court.—(11.) No mineral lease which covers the land of a minor allottee and requires the approval of the Secretary of the Interior shall be for a term extending beyond the minority of such minor unless the court having jurisdiction of the minor's estate and the Secretary of the Interior shall approve such lease.

1046. Leases Upon Lands of Minors Modified to Conform to New Regulations.—(12.) With the approval of the probate court and the Secretary of the Interior, mineral leases covering land of minor allottees made and approved



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upon forms authorized prior to the revised regulations of April twentieth, nineteen hundred and eight, may be filed to give to the parties thereto any or all of the privileges, conditions or terms of the lease form approved April twentieth, nineteen hundred and eight.

§ 1047. Approval of Tribal Authorities Not Necessary for Lease of Seminole Lands.—(13.) From and after the first, nineteen hundred and eight, mineral leases which require the approval of the Secretary of the Interior on leasing lands of Seminole allottees, as provided in section 1 of the Act of May twenty-seventh, nineteen hundred and eight, shall be made under these regulations without the approval of the tribal authorities.

§ 1048. Amendment of Section 994.—(14.) Section 994 of the regulations of April twentieth, nineteen hundred and eight, is amended to read as follows:

“Lessees must procure and file with each an affidavit of the Indian lessor, made before the District Agent, United States Indian Agent, Union Agency, if possible, or, before a Federal judge, clerk of the Federal court, United States commissioner or county or district judge, showing that the lease was understood by the lessor, and the terms and agreements, if any. (See form D, prescribed, which covers lessee's affidavit of bonus and non-development.)”

**AGRICULTURAL, GRAZING AND OTHER LEASES,
OTHER THAN MINERAL.**

§ 1049. Certain Leases Not Required to Be Approved.—(15.) Leases, other than mineral, covering restricted other than homesteads for a period not exceeding five years without the privilege of renewal, and leases covering restricted homesteads for a period not exceeding one year may be made by allottees without the approval of the Secretary of the Interior.

1050. Leases Requiring Approval.—(16.) Leases other than mineral covering restricted lands for longer periods than provided above may be made with the approval of the Secretary of the Interior and not otherwise.

1051. Manner of Obtaining Agricultural Leases.—(17.) Leases other than mineral which require the approval of the Secretary of the Interior shall be made in quadruplicate upon forms prescribed by said Secretary, and with the papers required shall be filed with the District Agent in which the land leased is situated within thirty days after date of execution. Lessees are required to furnish a bond with satisfactory surety, in a sum equal to the entire rental. The general rules prescribed for oil and gas leases shall be followed as far as applicable for leases for other purposes, particularly as to corporations. (See amendment December twenty-first, nineteen hundred and fourteen, sections 1096 and 1140.)

§ 1052. Leases Other Than Mineral, Agricultural or Grazing, Form of.—(18.) Forms for leases other than mineral, agricultural and grazing have not been prescribed. Such leases on any satisfactory form will be considered. (Sections 1 and 9 of the Act of Congress Approved May 27, 1908.)

1053. Removal of Restrictions—Legislation Quoted.—(19.) That from and after sixty days from the date of enactment the status of lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled, including intermarried whites, as freedmen, and as mixed-blood persons having less than half Indian blood, including homesteads, shall be free from all restrictions. All lands, except homesteads, of said allottees enrolled as mixed-blood persons having half or more than half and less than three-quarters Indian blood, shall be free from all restrictions.

"All allotted lands of adult mixed-bloods of three-quarters or more Indian blood.

"All allotted lands of adult full-blood allottees."

§ 1056. **Application for Removal—Duty of Indian Agent.**—(21.) When an application is received by a District Agent, he shall, after investigation, including a personal interview with the applicant, forward the application with report and recommendation to the Indian Agent at Union Agency to be transmitted with his report and recommendation for such action as the Secretary of the Interior may deem proper.

§ 1057. **Restrictions Removed Where Applicant Competent.**—(22.) If the Secretary of the Interior finds that any applicant for the removal of restrictions should have the unrestricted control of his allotment he will remove the restrictions wholly or in part without conditions concerning terms of sale and disposal of the proceeds.

§ 1058. **Sale of Land Upon Removal of Restrictions.**—(23.) When, however, the Secretary of the Interior finds it to be for the best interests of any applicant that all or part of his restricted lands should be sold with conditions concerning terms of sale and disposal of the proceeds, he may remove the restrictions to become effective only and simultaneously with the execution of the deed by said applicant to the purchaser. Before said deed is executed the designated tract or tracts of land shall be sold upon such terms as the Secretary of the Interior may in each case specifically direct. Whenever the Secretary of the Interior so directs, the Indian Agent will cause a description of the land with necessary information to be posted at his office, and so far as practicable on the bulletin board at the courthouse of each county within the territory occupied by the Five Civilized Tribes, and also at the office of each District Agent, for a period of not less than thirty days; and sealed

hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; and if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restriction; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: **Provided further,** That the provisions of section twenty-three of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section.

§ 1054. Application for Removal of Restrictions.—(19.) Adult members of the Five Civilized Tribes, whose allotments cannot be sold or encumbered except after removal of restrictions therefrom by the Secretary of the Interior, provided by the above quoted provisions of law, and who desire to have the restrictions removed from all or part of their allotments, shall apply to the United States Indian Agent, Union Agency, through the District Agent of the district in which the applicant resides; the application to be made in duplicate on forms which have been prescribed and will be furnished free of charge on application to the United States Indian Agent or any District Agent.

§ 1055. Classes of Land to Which Regulations Apply.—(20.) The classes of restricted lands to which the above quoted provisions of laws and these regulations apply are as follows:

"Homesteads of adult mixed-blood allottees having half more than half and less than three-quarters Indian blood.

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appraisement shall not be disclosed to any person prior to the opening of bids nor be made public thereafter (all appraisements now made public when tract advertised for sale, see amendment, section 1066), and no bid less than the appraised value shall be considered. All cost of conveying and recording shall be at the expense of the purchaser. The checks of unsuccessful bidders shall be returned at the earliest possible moment when properly receipted for to the Indian Agent.

§ 1060. Endorsement Upon Order of Removal.—(25.)

Upon the proper consummation of a sale made in compliance with the directions of the Secretary of the Interior, the Indian Agent, or other officer in charge of the Union Agency, will make an endorsement upon the order for the removal of restrictions from the land sold, using the following form:

“I hereby certify that, pursuant to the above order, the land described therein has been sold in compliance with the directions of the Secretary of the Interior, and that, to make the sale effective, deed for said land from said allottee to....., the purchaser, was executed on , 190.....”

§ 1061. Endorsement Upon Deed.—(26.) The Indian Agent, or other officer in charge of the Union Agency, will make an endorsement upon the deed also, using the following form:

“I hereby certify that the land conveyed by this deed has been sold in compliance with the directions of the Secretary of the Interior pursuant to the order dated , 190....., for the removal of restrictions from said land.”

§ 1062. Delivery of Deed.—(27.) Such deed and the order for the removal of restrictions, thus endorsed, shall,

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after proper record thereof has been made at the Union Agency, be delivered by the Indian Agent to the grantee.

§ 1063. Proceeds of Sale.—(28.) The proceeds of such sales shall be held by said Indian Agent in his official capacity, and be disbursed for the benefit of the respective Indians as the Secretary of the Interior may direct in each case.

§ 1064. May Direct Sale for Part Cash.—(29.) When the Secretary of the Interior deems it to be to the best interest of the allottee he will, as far as practicable, direct that the payment for the land sold shall be part cash and the balance secured by a first mortgage on the premises conveyed, such balance to be paid upon such terms and conditions as may be designated in each case. (Amended April twentieth, nineteen hundred and twelve, section 1079.)

C. F. Larrabee,

Acting Commissioner of Indian Affairs.

Department of the Interior, June 20, 1908.

Approved: Jesse E. Wilson, Assistant Secretary.

ORDER OF AUGUST 12, 1908.

Notice to Parties Holding Mineral Leases, Approved by the Department, on Lands From Which the Restrictions Have Been Removed.

§ 1065. Mineral Leases—Relinquishment of Supervision, Notice of.—The following provision has been adopted by the Department for the relinquishment of supervision of leases approved by the Secretary of the Interior on lands from which the restrictions have been removed:

“That under section forty-two of the Revised Leasing Regulations of April twentieth, nineteen hundred and

eight, in cases where the restrictions are removed where the Department is to relinquish supervision as provided in said section, the Indian Agent at Union Agency will notify the lessees that before such supervision will be relinquished, unless a new bond is waived by the lessor or owner of the land, as the regulations authorize, the lessee must furnish a bond running to the lessor, his heirs or assigns, in the same amount as originally required where such bond was made to the United States, and when such bond is filed with the Indian Agent, examined by him and the surety found to be satisfactory, it shall be forwarded to the lessor, his heirs or assigns, and both parties will thereupon be notified that the Department will no longer exercise supervision over the lease and the surety upon the original bond running to the United States will be notified that it will only be liable for such obligations as accrued prior to the date of the new bond."

Upon the filing of a waiver of bond, the lessee and surety will be given the same notice of relinquishment of supervision as if a new bond were furnished.

Approved, August 12, 1908.

Jessie E. Wilson, Assistant Secretary.

AMENDMENT OF AUGUST 31, 1909.

To Section 24 of the Regulations of June 20, 1908, governing the removal of restrictions in the Five Civilized Tribes.

§ 1066. **Amendment of Section 1059—Appraised Value.**—"Each tract of land posted or offered for sale as provided herein shall, prior to the date bids are to be opened, be inspected and appraised at its full value under the direction of the Superintendent or other officer in charge of the Union Agency, Oklahoma, and the amount of such appraisement shall be stated in the advertisement and no bid for less than

he appraised value shall be considered. All cost of conveyance and recording shall be at the expense of the purchaser. The checks of the unsuccessful bidders shall be returned at the earliest possible moment when properly received for to the Superintendent at Union Agency."

F. H. Abbott, Acting Commissioner.

Approved Aug. 31, 1909.

Frank Pierce, First Assistant Secretary.

AMENDMENT OF JULY 23, 1910.

To the Regulations of April 20, 1908, governing the leasing of lands of members of the Five Civilized Tribes.

§ 1067. **Amendment of Section 1009 — Royalties Due Minors and Incompetents.**—Section twenty-five of the Revised Regulations of April twentieth, nineteen hundred and eight, covering the leasing of oil and gas lands in the Five Civilized Tribes, repromulgated June twentieth, nineteen hundred and eight, is amended so as to read as follows:

"All royalties, rents or payments accruing under any lease made for or on behalf of any minor or incompetent shall be held by the United States Indian Superintendent, Union Agency, or such other disbursing officer as may be designated by the Secretary of the Interior, to the credit of the guardian (or curator) of such minor or incompetent and shall be paid to such guardian (or curator) upon voucher executed by him and approved by the judge of the county (probate) court having jurisdiction of the estate of such minor or incompetent (the form of such voucher to be prescribed by the Department), or upon authority of such court in the form of an order satisfactory to said superintendent or other officer in charge of the Union Agency."

C. F. Hauke, Second Assistant Commissioner.

Approved July 23, 1910.

Frank Pierce, First Assistant Secretary.

AMENDMENTS OF FEBRUARY 6, 1911.

To the Regulations of April 20, 1908, governing leasing of lands of members of the Five Civilized Tribes, in Oklahoma.

Effective May 1, 1911.

§ 1068. **Amendment of Sections 985, 1000, 1006.**—Sections one, sixteen, twenty-two and twenty-three of the regulations, approved April twentieth, nineteen hundred and eight, are hereby amended to read as follows:

§ 1069. **Oil and Gas Leases for Ten Years.**—(1.) Oil and gas leases requiring the approval of the Secretary of the Interior may be made for a period of ten years from the date of the approval thereof by the Secretary of the Interior and as much longer thereafter as oil or gas is found in paying quantities; all leases shall be executed upon forms prescribed by the Department.

§ 1070. **Royalties Upon Oil and Gas.**—(16a.) Oil and gas leases shall contain the following provision in lieu of that portion of paragraph two of the lease form approved April twentieth, nineteen hundred and eight, which relates to the mining of gas and the payment of royalties thereon:

“And the lessee shall pay as royalty on each gas-producing well \$300.00 per annum in advance, to be calculated from the date of commencement of utilization: **Provided however,** In the case of gas wells of small volume, when the rock pressure is 100 pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: **Provided, further,** That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connec-

on with drilling and pumping operations on adjacent or near-by tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate same. Failure on the part of the lessee to use a gas-producing well, which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of his lease so far as the same relates to mining oil, but if the lessee desires to retain gas-producing privileges the lessee shall pay a rental of one hundred dollars per annum in advance, calculated from date of discovery of gas, on each gas-producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the twenty-fifth day of the month succeeding that for which such payment is to be made, supported by sworn statements."

§ 1071. Capacity of Well—How Determined.—b. The capacity of wells shall be ascertained, under the supervision of the Secretary of the Interior, when necessary under the terms of the lease to determine the amount of royalty to be collected.

§ 1072. Not to Exceed 75 Per Cent Capacity of Well.—

Except in cases of emergency, which shall not exceed ten days, not more than seventy-five per cent of the capacity of any gas well shall be utilized.

d. Evidence of date of discovery of gas wells and the beginning of utilization must be promptly furnished by the lessee in the form of a sworn statement.

§ 1073. Annual Royalty Before Development.—(22.) In

oil and gas leases, until a producing well is completed on leased premises, and in all other mineral leases, advance royalty shall be paid annually in advance from the date of approval of the lease, as follows: Fifteen cents per acre per annum for the first and second years; seventy-five cents per acre for the fifth year, and on oil and gas leases one dollar per acre for each successive year; and in the case of mineral leases other than for oil and gas, seventy-five cents per acre annually after the fifth year; the sums thus paid to be credited on the stipulated royalties.

The advance royalty for the first year shall be tendered at the time of the filing of the lease in the office of the United States Indian Superintendent at Union Agency.

On all mineral leases other than for oil and gas, when the annual advance royalty becomes due on a leased tract from which minerals are being produced, the lessee will not be required to pay the advance royalty until the royalty on production during the month within which the advance royalty falls due is accounted for; and if royalty on production equals or exceeds the advance royalty it will be accepted as covering both items, but if it does not equal the advance royalty due, the lessee shall include the difference with his payment on production.

§ 1074. **Rental for Delay in Drilling.**—(23.) An oil and gas lessee shall drill at least one well on leasehold within twelve months from the date of the approval of the lease by the Secretary of the Interior, or may delay drilling said well not exceeding ten years from the date of such approval by paying to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of lessor (subject to the limitations and conditions in said lease contained), in addition to said advance royalty, the sum of one dollar per acre per annum, for each year the completion of such well is delayed, payable on or before the end of each year. The lessee may be required by the Secretary of the Interior, or by such officer as he may de-

nate for the purpose, to drill and operate wells to offset wells on adjoining tracts and within three hundred feet of the dividing line, or in case of gas wells the lessee may have the option of paying on each proposed well a sum equal to the royalty, which, under these regulations, would be payable on the well to be offset instead of drilling such offset well. Offset wells must be drilled, or royalties paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of the lease.

(Sections 22 and 23, Amended June 29, 1911. Sec. 1076.)

§ 1075. Effect of Change in Regulations Upon Existing Leases.—Appropriate changes will be made in the lease form to provide for and carry into effect the provisions of the above modified regulations and such modifications of the regulations and lease form shall be effective May first, nineteen hundred and eleven, and may, at the option of the parties, be incorporated in leases hereafter executed prior to that date. Said modified provisions may also be substituted in any lease, executed prior to said date on forms now heretofore in use, in lieu of corresponding provisions retained in such leases, upon formal stipulations by the parties to that effect, when duly approved by the Secretary of the Interior. All leases which embrace the said provisions, whether in original form or by substitution, shall be subject to these regulations.

These regulations shall not be construed as intended to affect existing approved leases, except where such leases are modified by stipulation, as provided herein, or where such leases are susceptible of modification in these respects by regulation.

F. H. Abbott,

Assistant Commissioner of Indian Affairs.

Department of the Interior,

Washington, D. C., February 6, 1911.

Approved: Frank Pierce, First Assistant Secretary.

AMENDMENTS OF JUNE 29, 1911.

To the Regulations of April 20, 1908 (and subsequent amendments), governing leasing of lands of members of the Five Civilized Tribes in Oklahoma.

§ 1076. **Amendment of Sections 1006 and 1007 Amended by Section 1068.**—Sections twenty-two twenty-three of the Regulations approved April twenty-nine hundred and eight, as rewritten and amended February sixth, nineteen hundred and eleven, are hereby amended as follows:

§ 1077. **Advance Royalty Not Refunded.**—(22.) Add following paragraph to section twenty-two as now written: "Advance royalty accruing under this section when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation of the lease, nor shall the lessee be relieved from his obligation to pay said advance royalty annually when it becomes due by reason of any subsequent surrender or cancellation of such lease."

§ 1078. **Option to Defer Drilling for More Than One Year—Conditions.**—(23.) Section twenty-three of the Regulations (paragraph four of the lease form) will be entirely rewritten and is amended to read as follows: "(Sec. 23.) The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by the lease and shall drill at least one well thereon within one year from the date of approval of the lease by the Secretary of the Interior. If the lessee fails to do so, the United States Indian Superintendent, United States Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for such whole year the completion of such drilling is delayed after the date of such approval by the Secretary."

f the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named in the lease, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender the release by executing and recording a proper release hereof and otherwise complying with paragraph seven of the lease, on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of the lease, and be cause for cancellation of such lease under paragraph nine thereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as he may designate for the purpose, to drill and operate wells to offset wells on adjoining tracts and within three hundred feet of the dividing line, or in case of gas wells the lessee may have the option of paying on each proposed well a sum equal to the royalty, which, under these regulations, would be payable on the well to be offset instead of drilling such offset well. Offset well must be drilled, or royalties paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of the lease."

Pending unapproved leases will be approved upon the condition that the lessee and surety agree to the acceptance

of the foregoing amendments, and appropriate changes will be made in the lease form to provide for and carry into effect such amendments.

F. H. Abbott,
Acting Commissioner of Indian Affairs

Department of the Interior,

Washington, D. C., June 29, 1911.

Approved: Samuel Adams, First Assistant Secretary.

AMENDMENT OF APRIL 20, 1912.

To the Regulations of June 20, 1908, governing the removal of restrictions in the Five Civilized Tribes.

§ 1079. **Amendment of Section 1064.**—Section twenty-nine of the Regulations, approved June twentieth, nineteen hundred and eight, under the acts of Congress of May twenty-seventh, nineteen hundred and eight (35 Stat. 312) is hereby amended to read as follows:

§ 1080. **Sale of Land From Which Restrictions Removed.**—“(29.) Upon the removal by the Secretary of the Interior of a conditional order for the removal of restrictions, as provided in these regulations, the land covered thereby to be sold under the supervision of the Superintendent of the Union Agency, the said Superintendent is hereby authorized, in such cases, as he considers to be for the best interests of the respective allottees so to do, to advertise and sell said land by sealed bids or at public auction for not less than the appraised value, for cash or upon deferred payments, any such deferred payment sales to be made under the following terms:

“ ‘Where the consideration is five hundred dollars or less, at least one-half to be paid in cash at the time of the sale and the remainder to be evidenced by purchasers note due and payable in not more than eighteen months after the date of purchase and secured by first mortgage on the premises conveyed.

'Where the consideration exceeds five hundred dollars, it is not more than one thousand five hundred dollars, at least one-third to be paid in cash at the time of sale and the remainder in two equal payments evidenced by purchaser's note or notes to fall due not more than two and a-half years from date of purchase, and secured by first mortgage on the premises conveyed.'

'Where the consideration exceeds one thousand five hundred dollars, at least one-fourth to be paid in cash at the time of sale and the remainder in three equal payments evidenced by purchaser's note or notes to fall due not more than three and one-half years from the date of purchase and secured by first mortgage on the premises conveyed.'

'All cash payments at the time of sale to be paid into the hands of the cashier and special disbursing agent of the Union Agency, Muskogee, Oklahoma, or his successor in authority and all notes, and mortgages securing same, to contain the express condition that no payment purporting to discharge, satisfy, or release the indebtedness evidenced thereby, unless such payments, and interest accruing thereon, are made to the cashier of the Union Agency, or his successor in authority, for the benefit of the proper allottee, or, if such note or notes are properly negotiated with the approval of the Secretary of the Interior, to the owner or owners of such notes, shall operate as a release, satisfaction, discharge or payment thereof, and such notes shall be non-negotiable except with the approval of the Secretary of the Interior. Said note or notes shall be held by the cashier of the Union Agency, or his successor in authority, for collection when due. Said note shall draw interest from date of execution until paid at the rate of eight per cent per annum.'

All moneys received by the said cashier of the Union Agency, or his successor in authority, on account of deferred payments, and accrued interest thereon, shall be deducted or held to the credit of the proper allottee in Individual Bank Accounts, and to be subject to the rules,

regulations, and orders of this Department governing the holding of moneys so deposited or the disbursement thereof.

"This amendment shall apply to any order of this Department heretofore made covering the sale of allotted lands of members of the Five Civilized Tribes where the land covered by such order has not been sold and such order is still in effect."

Robert G. Valentine,
Commissioner of Indian Affairs.

Department of the Interior, April 20, 1912.

Approved: Samuel Adams, First Assistant Secretary.

Amendment of Oct. 14, 1907, to section fifteen of the regulations of June 11, 1907, governing the leasing of lands allotted to members of the Five Civilized Tribes in the Indian Territory.

§ 1081. **Amendment of Section 15—Regulations of June 11, 1907.**—Section fifteen of the regulations referred to above is hereby amended to read as follows:

§ 1082. **Royalty on Oil.**—(15.) The minimum rate of royalty on oil shall be ten (10) per cent of the gross proceeds of all oil produced from the leased premises, payment to be made at the time of the sale or disposition of the oil, but the Secretary of the Interior may, from time to time, increase the existing minimum rate of royalty to a minimum rate not exceeding sixteen and two-thirds (16 ²/₃) per cent, provided that any lease hereafter delivered to the lessee, in which the royalty specified is at any time less than the minimum rate of royalty in force at that time, as fixed in accordance herewith, shall be subject to such minimum rate of royalty instead of the rate originally specified in the lease.

C. F. Larrabee,
Acting Commissioner of Indian Affairs.

Department of the Interior, October 14, 1907.

Approved: James Rudolph Garfield, Secretary.

AMENDMENT OF NOVEMBER 29, 1912.

§ 1083. **Amendment of Section 1060 as Amended by Section 1067.**—Section twenty-five of the Revised Regulations of April twentieth, nineteen hundred and eight, covering the leasing of the lands in the Five Civilized Tribes repromulgated June twentieth, nineteen hundred and eight, is further amended by adding to the said section as rewritten and amended July twenty-third, nineteen hundred and ten, the following:

§ 1084. **Withholding Money Due Member Authorized.**—**Provided, however,** that the said superintendent, or other officer in charge of the Union Agency, is authorized, in his discretion, where considered for the best interests of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents, or payments accruing under any lease have been paid to said superintendent, to withhold the disbursement of such royalties, rents or payments, wholly or in part from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs."

Lewis C. Laylin,
Assistant Secretary.

Approved, Nov. 29, 1912.

AMENDMENTS OF MAY 12, 1913.

Effective June 1, 1913.

§ 1085. **Amendment of Sections 986, 1010, 1013 as Amended.**—Sections two, six and thirty of the regulations approved April twentieth, nineteen hundred and eight, with subsequent amendments, are hereby further amended and modified to read as follows:

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§ 1086. Leases in Quadruplicate to Be Filed Within 30 Days.—(Sec. 2.) All leases shall be in quadruplicate, and, with the papers required, shall be filed within thirty days from and after the date of execution by the lessor, with the United States Indian Superintendent at Union Agency, Muskogee, Oklahoma.

Assignments of leases and stipulations modifying the terms of existing leases shall also be filed with said Superintendent within thirty days from and after the date of execution.

§ 1087. Fee for Filing Leases and Assignments.—A filing fee of five dollars for each lease and each assignment, and two dollars for each stipulation modifying the terms of existing contracts, is hereby required, and shall accompany each lease, assignment or stipulation from and after June first, nineteen hundred and thirteen. Such fees shall be accounted for by the disbursing agent of Union Agency as miscellaneous receipts Class IV, subject to disbursement under the regulations governing such funds.

§ 1088. Notice of Execution of Lease.—Within twenty-four hours of the execution by an Indian lessor of an oil, gas or other mineral lease, which requires the approval of the Secretary of the Interior, the lessee must either file in the office of the Superintendent of Union Agency or deposit in the mails addressed to said Superintendent a notice of the execution of such lease, signed by the lessee or his agent upon a form furnished with the lease blanks, showing date and hour of execution, description of land, names of parties, character of lease, etc. It is preferred that these notices be sent by registered mail. If not so sent, other proof of mailing may be required. Immediately upon receipt of such notice by the Superintendent, entry thereof will be made in the same manner as leases are indexed for the information and notice of the public. Failure to file the lease within thirty days from and after the date of exe-

tion, will be considered an abandonment thereof, and the land may be leased to other parties.

Filing fees will be increased in the discretion of the Secretary of the Interior where assignments and stipulations are not filed within the required time.

§ 1089. No Operation Until Lease Approved.—(Sec. 26.) Operations will not be permitted under any lease requiring approval of the Secretary of the Interior, until the approved lease has been delivered. If there has been a contract respecting a lease or leases, the approved, disapproved or cancelled parts thereof will be held in the office of the Superintendent for five days after promulgation by him, by mailing or delivery, of the Department's decision, and will not be delivered, if within that period a motion for review or reconsideration be filed, until such motion is passed upon by the Department.

§ 1090. Facilities for Capping Wells to Be Provided.—(Sec. 30.) (a) Lessees drilling for oil or gas on Indian lands must keep at each well ready for immediate use, the best approved facilities for capping the well to prevent the waste of gas or oil in the case of the unexpected flow of either from the well; in case of wells already under way, immediately notify the Superintendent of the Union Agency of the exact location of each well and the kind of equipment for capping oil and gas wells provided by them. Lessees must hereafter furnish such report immediately upon the commencement of every new well.

§ 1091. Escape of Gas Not Permitted.—(b) In all oil gas wells where gas occurs above the oil, the gas must be forced back and held in the strata until needed—in which case the drilling for oil can be resumed as soon as the gas has been confined in its own stratum—or the drilling must be discontinued and the well securely capped to prevent the waste of the gas; or the gas must be cased off and brought out of the well for use, separate from the oil.



§ 1094

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In no case shall gas occurring in strata above the oil be used to lift oil from the oil bearing strata to the surface and be allowed to escape.

(c) Operators will be expected to exercise every reasonable precaution to avoid waste of natural gas, after separation from the oil, where the gas occurs in the same strata and comes from the wells with the oil.

In general, every possible precaution must be taken to stop the present waste and prevent future waste of natural gas both at the wells and from connecting pipe lines, and also to prevent the wasteful use of gas about the wells.

§ 1092. **Casing Off Water.**—(d) When, in the course of drilling, operators strike water, drilling must be stopped before proceeding into the strata, until adequate provision has been made for permanently shutting out the water and thus preventing its reaching either the overlying or underlying oil and gas-bearing strata.

§ 1093. **Penalty for Failure to Comply.**—(e) A failure on the part of the lessee or operators to prevent a waste of gas and to prevent the oil and gas strata from an inflow of water, as provided by these regulations, shall be a violation of one of the material and substantial terms and conditions of the lease and shall subject the lease to cancellation by the Secretary of the Interior.

§ 1094. **Date Amendments Become Effective.**—These amendments shall become effective and be in full force and effect after June first, nineteen hundred and thirteen, and shall supersede all former regulations in conflict therewith.

F. H. Abbott,

Acting Commissioner of Indian Affairs

Department of the Interior,

Washington, D. C., May 12, 1913.

Approved: Franklin K. Lane, Secretary.

AMENDMENT OF DECEMBER 21, 1914.

§ 1095. **Amendment of Section 1001 as Amended by Section 1043.**—Section seventeen of the regulations of April twentieth, nineteen hundred and eight, is hereby amended and modified to read as follows:

§ 1096. **Agricultural Leases, Requirements.**—“Leases other than mineral, which require the approval of the Secretary of the Interior, shall be made in quadruplicate upon forms prescribed by said Secretary, and with the papers required shall be filed as soon as possible after execution with the field clerk or other local representative in charge of the district in which the land is situated. Any unusual delay in filing must be explained, and if more than thirty days, the consent of the lessor may, in the discretion of the Commissioner of Indian Affairs, be required. **Provided**, that no such lease will be accepted or filed after the expiration of 60 days from the date of its execution. Lessees, when required, shall furnish bond with satisfactory surety, in an amount equal to the entire rental. The general rules prescribed for oil and gas leases will be followed as far as applicable for leases for other purposes, particularly as to corporations.”

E. B. Meritt,
Assistant Commissioner of Indian Affairs.

Department of the Interior,
Washington, D. C., December 21, 1914.

Approved: Bo Sweeney, Assistant Secretary.

AMENDMENTS OF JANUARY 16, 1915.

§ 1097. **Amendment of Section 1058.**—Section twenty-five of the regulations approved June twentieth, nineteen hundred and eight, under the provisions of the Act of Congress approved May twenty-seventh, nineteen hundred and eight (Stats. 312), is hereby amended to read as follows:



§ 1101

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§ 1098. **Sale of Restricted Land—Bids.**—"Bids for purchase of allotted Indian lands of restricted allottees be received at the office of the local field representative of the Department for the district in which the land is situated at the duly advertised hour of the day on which the bids are to be received and such hour shall not be earlier than ten o'clock a. m., and not later than four o'clock p. m. on the date set for the sale."

§ 1099. **Amendment of Section 1064 as Amended by Section 1079.**—Section twenty-nine of the regulations approved June twentieth, nineteen hundred and eight, and the amendments thereto approved April twentieth, nineteen hundred and twelve, under the Act of Congress approved May twenty-seventh, nineteen hundred and eight (35 Stats. 315) hereby amended to read as follows:

§ 1100. **Sale of Restricted Land, Interest on Deferred Payments.**—"Notes representing deferred payments of consideration paid for allotted Indian lands of restricted allottees shall bear interest from date of execution until maturity at the rate of six per cent per annum."

These amendments shall apply to any order of the Department heretofore made covering the sale of allotted lands of members of the Five Civilized Tribes where lands covered by such order have not been sold and such order is still in effect.

Cato Sells,
Commissioner Indian Affairs,
Department of the Interior, January 16, 1915.

Approved: A. A. Jones,
First Assistant Secretary of the Interior.

AMENDMENT OF JUNE 18, 1915, TO

§ 1101. **Amendment of Section 995.**—Section eleven of the regulations of April twentieth, nineteen hundred and eight.

RULES AND REGULATIONS.

§ 1106

In connection with the consideration and approval of leases of minors' lands, the following general rules are promulgated:

§ 1102. Lease Extending Beyond Minority of Lessor.—

(1) A lease for a term extending beyond the minority of the lessor will not be considered unless it is sufficiently shown that such a lease is necessary to prevent damage by reason of drainage or otherwise.

§ 1103. Lease on Lands of Minor Near Majority.—(2.)

Leases covering the lands of minors who will become of age one or two years will not be favorably considered unless there is likelihood of the land being jeopardized during such period by reason of development of the adjacent properties.

§ 1104. Lease Extending Beyond Minority, Approval.—

(1) Minors' leases will be approved except as mentioned in Rule 1 to continue during the minority of lessor and as long thereafter as oil or gas is found in paying quantities where said minors will become of age in two years or more. The stipulated term, however, not to exceed ten years. Department of the Interior,

Washington, D. C., June 18, 1915.

Approved: Bo Sweeney, Assistant Secretary.

AMENDMENT OF NOVEMBER 20, 1915.

§ 1105. Amendment of Section 996.—Section twelve of the regulations of April twentieth, nineteen hundred and eight, is amended to read as follows:

§ 1106. Bonds.—"The right is specifically reserved to increase the amount of any such bond above the sum named in any particular case and to accept substitute bonds where

§ 1108

LANDS OF THE FIVE CIVILIZED TRIBES.

the Secretary of the Interior deemed it proper to do so. Bonds covering other mineral leases shall be in such sum as may be fixed by the Secretary."

E. B. Meritt,
Assistant Commissioner.

Approved: Nov. 20, 1915.

Bo Sweeney, Assistant Secretary.

REGULATIONS TO GOVERN OIL AND GAS OPERATIONS ON RESTRICTED LANDS IN OKLAHOMA.

§ 1107. **Definition of Terms Used.**—The following expressions, wherever used in the lease and regulations, shall have the meaning now designated, viz:

Superintendent.—The superintendent of any Indian agency in Oklahoma, or any other person who may be in charge of such agency and reservation, and it shall be his duty to enforce compliance with these regulations.

Inspector.—Any person appointed as inspector of oil and gas operations, or who may be designated by the Secretary of the Interior or the Commissioner of Indian Affairs to supervise oil or gas operations on restricted Indian lands, acting under general instructions from the Bureau of Mines and under the supervision of the superintendent.

Oil Lessee.—Any person, firm, or corporation to whom an oil-mining lease is made under these regulations.

Gas Lessee.—Any person, firm, or corporation to whom a gas lease is made under these regulations.

Leased Lands.—The term "leased lands" or "leased premises" or "leased tract" shall mean any restricted lands belonging to Indian allottees within the State of Oklahoma from which restrictions have not been removed, and which have been leased by such allottees with the approval of the Secretary of the Interior.

§ 1108. **No Operations Until Lease Approved.**—(1.) No operations shall be permitted upon any tract of land until

a lease covering such tract shall have been approved by the Secretary of the Interior.

§ 1109. **Inspector, Powers and Duties of.**—It shall be the duty of the inspector—

(2.) To visit from time to time leased lands where oil and gas mining operations are being conducted and to inspect and supervise such operations, with a view to preventing waste of oil and gas, damage to oil, gas, or water bearing formations, or to coal measures or other mineral-bearing deposits, or injury to property or life, in accordance with the provisions of these regulations.

§ 1110. **To Supervise Operations.**—(3.) To make reports to the superintendent and to the Bureau of Mines as to the general conditions of the leases, property, and the manner in which operations are being conducted, and his orders complied with.

(4.) To consult and advise with the superintendent as to the condition of the leased lands, and to submit information and recommendations from time to time for safeguarding and protecting the property of the lessor and securing compliance with the provisions of these regulations.

(5.) To give such orders or notices as may be necessary to secure compliance with the regulations and to issue all necessary instructions or orders to lessees to stop or modify such methods or practices as he may consider contrary to the provisions of such regulations.

(6.) To modify or prohibit the use or continuance of any operation or method which, in his opinion, is causing or is likely to cause any surface or underground waste of oil or gas or injury to any oil, gas, water, coal, or other mineral formation, or which is dangerous to life or property or in violation of the provisions of these regulations.

(7.) To prescribe, subject to the approval of the super-

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intendent, the manner and form in which all records and reports called for by these regulations shall be made by the lessee.

(8.) To prohibit the drilling of any well into an oil-producing sand, when in his opinion and with the approval of the superintendent the marketing facilities are inadequate or insufficient provision has been made for controlling the flow of oil or gas reasonably to be expected therefrom until such time as suitable provision can be made.

(9.) To prescribe or approve the methods of drilling of wells through coal measures or other mineral deposits.

(10.) To determine when and under what conditions a producing well may be drilled deeper and under what conditions a producing well or sand may be abandoned.

(11.) To require that tests shall be made to detect the presence of oil or gas or the presence of water in a well, and to prescribe or approve the methods of conducting such tests.

(12.) To require that any condition existing subsequent to the completion of a well which is causing, or is likely to cause, damage to an oil, gas, or water bearing formation or to coal measures, or other mineral deposits, or which is dangerous to life or property, be corrected as he may prescribe or approve.

(13.) To approve the type or size of separators used to separate the oil, gas, or water coming from a well.

(14.) The inspector may limit the percentage of open flow capacity of any well which may be utilized in his opinion such action is necessary to properly produce the gas-producing formation.

(15.) The inspector shall be the sole judge of whether his orders have been fully complied with and carried out.

§ 1111. Duties of Lessees to Appoint Local Agents.
(16.) Before actual drilling or development operation

enced on the leased lands, or within not less than five days from the date of approval of these regulations of producing leases, or leased lands on which such operations have been commenced prior to such approval, lessee or assignee shall appoint a local or resident representative within Osage County or Oklahoma on whom the superintendent or other authorized representative of the Department of the Interior may serve notices or otherwise communicate with, in securing compliance with these regulations and shall notify the superintendent of the name and office address of the representative so appointed.

In the event of the incapacity or absence from the county of the designated local or resident representative, the lessee shall appoint some person to serve in his stead and in the absence of such representative, or of notice of the appointment of a substitute, any employee of the lessee upon the leased premises or the contractor or other person in charge of drilling operations thereon shall be considered representative of the lessee for the purpose of service of orders or notices as herein provided, and service upon such employee, contractor, or other person shall be deemed service from the lessee.

112. To Submit Report Showing Location of Proposed Wells.—(17.) Five days prior to the commencement of drilling operations lessee shall submit, on forms to be furnished by the superintendent, a report in duplicate showing the location of the proposed wells.

113. To Keep Log of Well.—(18.) Lessee shall keep on the leased premises accurate records of the drilling, logging, or deepening of all wells, showing formations penetrated through, casing used, together with other information as indicated on prescribed forms to be furnished by the superintendent, and shall transmit such and other reports and operations when required by the superintendent.



§ 1119

LANDS OF THE FIVE CIVILIZED TRIBES.

§ 1114. **To Furnish Plats of Premises.**—(19.) I shall furnish on the first day of January and the first of July of each year a plat in manner and form ascribed by the superintendent, showing all wells, active or abandoned, on the leased lands, and other related information. Blank plats will be furnished upon application.

§ 1115. **Shall Mark All Rigs and Wells.**—(20.) Lessee shall clearly and permanently mark all rigs or wells in a conspicuous place, with the name of the lessee and the number or designation of the well, and shall take all necessary precautions for the preservation of these markings.

§ 1116. **No Wells to Be Drilled Within Certain Limits.**—(21.) Lessee shall not drill within three hundred feet of the boundary line of leased lands except with the consent of the superintendent. Lessee shall not locate any well or rig within two hundred feet of any public highway or building used as a dwelling, granary, barn, or established watering place, except with the written permission of the superintendent.

§ 1117. **Mud-fluid Process.**—(22.) Lessee shall notify the superintendent, in advance, of intention to use the mud-fluid process of drilling, so that the inspector may approve the method and material to be used, in the event the operator is not familiar with this process.

§ 1118. **To Provide Slush Pit.**—(23.) Lessee shall provide a properly prepared slush pit into which all sand, pumpings and other materials extracted from the well during the process of drilling shall be deposited. Such sand, pumpings and materials shall not be allowed to run on the surface of the land. The construction of such pits shall be subject to the approval of the inspector.

§ 1119. **To Case Off Water.**—(24.) Lessee shall effectually shut out and exclude all water from any oil or gas

stratum and take all proper precaution and measure to prevent the contamination or pollution of any fresh water supply encountered in any well drilled for oil or gas.

. **Each Sand to Be Protected.**—(25.) Lessee shall keep to the satisfaction of the inspector each productive sand bearing formation drilled through for the purpose of producing oil or gas from a lower formation.

. **Gate Valve.**—(26.) Lessee shall place an appropriate gate valve, or other approved controlling device, at the innermost string of casing seated in the well, and keep the same in place and in proper condition for use until the well is completed, whenever drilling operations are commenced in "wildcat" territory or in a gas or oil field where gas pressures are known to exist, whenever the inspector deems the same necessary for the proper control of the flow of gas from the well.

2. **Gas Not to Be Wasted.**—(27.) When natural gas is encountered in commercial quantities in any well, the operator shall confine such gas to its natural stratum until such time as the same can be produced and utilized without waste, it being understood that a commercial quantity of gas produced by a well is any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours. **Provided,** That if in the opinion of the superintendent the flow of gas of a lesser quantity shall be of commercial value, the superintendent shall have authority to require the conservation of said gas. Water shall not be introduced into a well where such introduction will operate to kill or materially reduce the open flow of gas therein.

3. **Oil and Gas to Be Separated.**—(28.) Lessee shall separate the oil from the gas when both are produced in commercial quantities from the same formation or under conditions as might result in waste of oil or gas in commercial quantities.

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§ 1124. Gas Not to Be Used for Lifting Oil.—(29.) Lessee shall not use natural gas from a distant or secondary stratum for the purpose of flowing or lifting the oil.

§ 1125. Oil or Gas Not to Be Wasted.—(30.) Lessee shall prevent oil or gas or both from escaping from a well into the open air, and not permit any oil or gas well to run wild or to burn wastefully.

§ 1126. Use of Natural Gas.—(31.) Lessee shall not use natural gas in place of steam to operate engines or under direct pressure except with the special permission of the inspector.

§ 1127. Gas in Flambeau Lights.—(32.) Lessee shall not use natural gas in flambeau lights, save as authorized or approved by the inspector.

(33.) Lessee shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of natural gas and oil, or both, at the well from connecting lines, and to prevent the wasteful use of such gas about the well.

§ 1128. Must Notify Superintendent of Intent. (34.) Lessee shall notify the superintendent a reasonable time in advance of starting work, of intention to run, deepen, plug, or abandon a well; and whenever the superintendent or inspector has given notice that extra precautions are necessary in the plugging of wells in a particular territory, lessee shall give at least three days' advance notice of such intended plugging.

§ 1129. Abandoning Wells.—(35.) Lessee shall not abandon any well for the purpose of drilling deeper for oil or gas unless the producing stratum is properly protected and shall not abandon any well producing oil or gas without the approval of the superintendent or where it is

emonstrated that the further operation of such well is ommercially unprofitable.

§ 1130. **Abandoning Wells—Regulation.**—(36.) Lessee shall plug and fill all dry or abandoned wells on the leased lands in the manner required, and where any such well penetrates an oil or gas bearing formation it shall be thoroughly cleaned to the bottom of the hole before being plugged or filled, and shall then be filled with mud-laden fluid of a consistency approved by the inspector, from the bottom to the top thereof, before any casing is removed from the well, or in lieu of the use of such mud-fluid, each oil and gas bearing formation shall be adequately protected by cement, or approved plugs, or by both such plugs and cement, and the well filled in above and below such cement or plugs with material approved by the inspector.

Where both fresh and salt water are encountered in any dry or abandoned well which is not being filled with mud-laden fluid as hereinbefore provided, the fresh water shall be sufficiently protected against contamination by cement or approved plugs, or by both such cement and plugs, to be placed at such points in the well as the inspector shall approve for the protection of the fresh water.

§ 1131. **Abandoning Well in Coal Vein.**—(37.) If such abandoned or dry well be in a coal bed or other mineral vein deposit, or be in such condition as to warrant taking extraordinary precautions, the inspector may require such variations in the above-prescribed methods of plugging and filling as may be necessary in his judgment to protect such seam or deposit against infiltration of gas or water, and to protect all other strata encountered in the well.

§ 1132. **Manner of Plugging to Be Approved.**—(38.) The manner in which such mud-laden fluid, cement, or plugs shall be introduced in any well being plugged, and the type of plugs so used, shall be subject to the approval of the inspector.



§ 1136

LANDS OF THE FIVE CIVILIZED TRIBES.

In the event the lessee or operator shall fail to plug properly any dry or abandoned well in accordance with these regulations, the superintendent may, after five days' notice to the parties in interest, plug such well at the expense of the lessee or his surety.

§ 1133. **Disposal of B-S.**—(39.) All B-S or water from tanks or wells shall be drained off into proper receptacles located at a safe distance from tanks, wells, or buildings, to the end that same may be disposed of by being burned or transported from the premises.

Where it is impossible to burn the B-S, or where it is necessary to pump salt water in such quantities as would damage the surface of the leased land, or adjoining property, or pollute any fresh water, the lessee shall notify the superintendent, who shall give instructions in each instance as to the disposition of such B-S or salt water.

§ 1134. **Report of Accidents.**—(40.) Lessee shall make a full and complete report to the superintendent of all accidents or fires occurring on the leased premises.

§ 1135. **Tankage, Etc.**—(41.) Lessee shall provide approved tankage of suitable shape for accurate measurement, into which all production of crude oil shall be run from the wells, and shall furnish the superintendent copies of accurate tank tables and all run tickets, as and when requested.

§ 1136. **Payment of Royalty by Purchaser.**—(42.) The superintendent may make arrangements with the purchasers of oil for the payment of the royalty, but such arrangements, if made, shall not relieve the lessee from responsibility for the payment of the royalty should such purchaser fail, neglect, or refuse to pay the royalty when it becomes due: **Provided,** That no oil shall be run to any purchaser or delivered to the pipe line or other carrier for shipment or otherwise conveyed or removed from the leased premises until a division order is executed, filed, and approved.

by the superintendent, showing that the lessee has a regularly approved lease in effect and the conditions under which the oil may be run. Lessees shall be required to pay for all oil or gas used off the leased premises for operating purposes; affidavits shall be made as to the production used for such purposes and royalty paid in the usual manner. The lessee or his representatives shall be present when oil is taken from the leased premises under any division order, and will be responsible for the correct measurement thereof and shall report all oil so run.

The lessee shall also authorize the pipe-line company or the purchaser of oil to furnish the Superintendent with a monthly statement, not later than the tenth day of the following calendar month, of the gross barrels run as common carrier shipment or purchased from his lease or leases.

§ 1137. **Timber From Osage Lands Not to Be Used.**—(43.) Lessee will not be permitted to use any timber from any Osage lands except under written agreement with the owner, and, in all cases where lands are restricted, such agreement shall be subject to the approval of the superintendent or inspector. Lessee shall, when requested by the superintendent, furnish a statement under oath as to whether the rig timbers were purchased on the leased tract, and, if so, state the name of the person from whom purchased and give such other information regarding the procurement of timber as the superintendent may desire.

§ 1138. **Damage to Surface of Land.**—(44.) Unless expressly provided for in the lease, lessees shall pay to the superintendent for the parties in interest all reasonable damage done to the surface and any growing crops thereon for improvements on said land in the amounts of such damage when agreed upon between the parties in interest. When such amount cannot be agreed upon, any of such parties may notify the superintendent, whereupon the superintendent shall notify the parties in interest that if such claims cannot be arbitrated satisfactorily, he will, after ten

days from date of notice, investigate the matter of damage, such notice to be sent the lessee, allottee, or his heirs, and such other person as may have informed the superintendent in writing of a claim to an interest in such lands. The superintendent shall thereupon determine the damage and apportionment thereof between the parties in interest, such determination to be final, unless an appeal therefrom be taken to the Secretary of the Interior within ten days from the date of notice of such determination. The decision of the Secretary of the Interior shall be final and conclusive upon all parties concerned. The lessee shall be permitted to proceed with operations pending determination of the amount of damage by the superintendent upon depositing with the superintendent such amount as he may stipulate as sufficient to cover the damages claimed, and such lessee may continue with operations pending appeal upon depositing such additional amount, if any, as may be sufficient to cover the damages as fixed and apportioned by the superintendent, the surplus, if any, to be returned to the lessee. Pending action upon the appeal so much of said amount as is not in dispute by the parties in interest may be disbursed.

§ 1139. **Failure to Comply With Regulations.**—(45.) Failure to comply with any provision of these regulations shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a fine of not more than five hundred dollars per day for each and every day the terms of the lease or of the regulations are violated, or the orders of the superintendent pertaining thereto are not complied with, or to both said fine and cancellation, in the discretion of the Secretary of the Interior: **Provided**, That the lessee shall be entitled to notice and hearing with respect to the terms of the lease or of the regulations violated, which hearing shall be held by the superintendent, whose finding shall be conclusive unless an appeal be taken to the Secretary of the Interior within thirty days after notice of the superintendent's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

RULES AND REGULATIONS.

§ 1140

(46.) These regulations shall become effective and in full force from and after the date of approval and shall be subject to change or alteration at any time by the Secretary of the Interior.

E. B. Meritt,
Assistant Commissioner of Indian Affairs.

Van H. Manning,
Director Bureau of Mines.

Approved:

Department of the Interior, Franklin K. Lane.

AMENDMENT OF JANUARY 29, 1916.

Department of the Interior.
Office Commissioner of Indian Affairs,
Washington, D. C.

§ 1140. Agricultural Leases — Approval by Superintendent.—

r. Gabe E. Parker,
Superintendent Five Civilized Tribes.

y Dear Mr. Parker:

All agricultural leases which under the law (Act of May twenty-seventh, nineteen hundred and eight) must be made under rules and regulations prescribed by the Secretary of the Interior and with his approval, may well be finally acted upon in your office, and thus avoid the delay incident to transmitting the same to this city. The effect of this will be to permit the lessee to obtain possession of the land at an earlier date.

Therefore, authority is hereby granted for the Superintendent for the Five Civilized Tribes, or the Acting Superintendent in the absence of the Superintendent or his inability to act, to approve all such leases in the name of the Secretary of the Interior.

§ 1142 LANDS OF THE FIVE CIVILIZED TRIBES.

If the approval is made by you, it would be as follows:

“Approved: Franklin K. Lane,
Secretary of the Interior.

By Gabe E. Parker,
Superintendent of the Five Civilized Tribes.”

After action shall have been taken in the manner indicated, you will forward the original of the lease in each case for filing in the Indian Office.

Sincerely yours,
Cato Sells, Commissioner.

Approved: Jan. 29, 1916.
Franklin K. Lane, Secretary.

AMENDMENT OF APRIL 13, 1916.

§ 1141. Amendment of Section 1058 as Amended by Section 1097.—Section twenty-three of the regulations approved June twentieth, nineteen hundred and eight, under the provisions of the Act of Congress approved May twenty-seventh, nineteen hundred and eight (35 Stat. 312), as amended on January sixteenth, nineteen hundred and fifteen, is hereby amended to read as follows:

§ 1142. Bids for Purchase of Restricted Lands.—“Bids for the purchase of allotted Indian lands of restricted allottees will be received at such place, or places, as may be designated by the Superintendent for the Five Civilized Tribes at the duly advertised hour of the day on which the bids are to be received, and such hour shall not be earlier than ten o'clock a. m., and not later than four o'clock p. m. of the date set for the sale.”

Bo Sweeney,
Assistant Secretary of the Interior.
Department of the Interior,
Washington, D. C., April 13, 1916.

CHAPTER LXIII.

REGULATIONS OF JULY 18, 1918.

Governing the sale of the unallotted tribal lands* in the Choctaw, Chickasaw and Creek Nations, Oklahoma, as authorized by Section 14 of the Act of Congress approved July 1, 1903 (32 Stat. L. 641-642), and Section 16 of the Act of Congress approved April 26, 1906 (34 Stat. L. 137-143), and the surface of the segregated coal and asphalt lands as authorized by the Act of Congress approved February 19, 1912 (37 Stat. L. 67), as amended by Section 18 of the Act of Congress approved August 24, 1912 (37 Stat. L. 518-531).

Department of the Interior, Washington, D. C.

1143. Regulations Governing the Sale of Unallotted Tribal Lands.—(Sec. 1.) The unsold unallotted tribal lands which these regulations apply aggregate approximately fifteen thousand eight hundred acres, including approximately seven thousand seven hundred acres of timber land six thousand seven hundred acres of the surface of the segregated coal and asphalt land in the Choctaw and Chickasaw Nations and about four hundred acres of other unallotted tribal land in the Choctaw, Chickasaw and Creek Nations.

Sec. 2.) The Superintendent for the Five Civilized Tribes shall advertise and sell these lands at public auction to the highest and best bidder, for not less than the appraised value, except as otherwise herein provided, subject to the

These regulations are practically identical with those approved July 18, 1916.

approval of the Secretary of the Interior, in accordance with those regulations, and when and as directed by the Commissioner of Indian Affairs. The sales shall take place at the county seats of the counties of the State of Oklahoma in which the land is located or other places throughout the Choctaw, Chickasaw and Creek Nations as may be designated by the Commissioner of Indian Affairs.

(Sec. 3.) Said Superintendent shall, as early as possible, prepare a list of tracts of the surface of the segregated coal and asphalt land to be offered for sale, conforming to the tract numbers as given on the approved schedules of appraisal and classification, and setting forth a description of each tract and of the improvements thereon, the number of acres in cultivation (and such other data as may be deemed advisable for the information of prospective purchasers). Said Superintendent shall also prepare lists of the tracts of timber and unallotted lands. Such lists shall indicate in separate tracts the description of each section or portion of a section to be sold and the area of and minimum price for each tract except as herein otherwise provided, and in the case of the timber lands shall show the quantity of pine timber thereon, including all such timber measuring eleven inches or over on the stump as reported by examiners to have been found thereon in the year nineteen hundred and eleven, together with the approximate quantity of hardwood timber. When it is necessary to divide a body of land exceeding one hundred and sixty acres in extent, the division shall be made along the section line or half section line, confining such tracts so far as practicable to the quarter section subdivision. In all cases of the timber land, the land and timber shall be sold together.

(Sec. 4.) The unallotted timber lands located in Township three South, Ranges eighteen to twenty-seven East, and Township four South, Ranges nineteen to twenty-seven East, inclusive, shall be offered at minimum prices ranging from one dollar and fifty cents to three dollars per acre,

and to each and every such tract offered shall be added and stated in the advertisement, or descriptive circular, the number of feet of hardwood at the rate of seventy-five cents per thousand feet, and the number of feet of pine at two dollars and fifty cents per thousand feet.

The unallotted timber lands located in Township five North, Ranges nineteen to twenty-seven East; Township four North, Ranges eighteen to twenty-seven East; Township three North, Ranges seventeen to twenty-seven East; Township two North, Ranges seventeen to twenty-two and twenty-five to twenty-seven East, inclusive; Township one North, Ranges seventeen, eighteen, nineteen, twenty-five, twenty-six and twenty-seven East; Township one South, Ranges sixteen, seventeen, eighteen, twenty-five, twenty-six and twenty-seven East, and Township two South, Ranges sixteen to twenty-seven East, inclusive, shall be offered at minimum prices ranging from one dollar and fifty cents to three dollars per acre, and to each and every such tract offered there shall be added and stated in the advertisement or descriptive circular the number of feet of hardwood at the rate of one dollar per thousand feet and the number of feet of pine at two dollars and fifty cents per thousand feet.

The unallotted timber lands located in Township 2 North, Ranges twenty-three and twenty-four East; Township one North, Ranges twenty to twenty-four East, inclusive, and Township one South, Ranges nineteen to twenty-four East, inclusive, shall be offered at minimum prices from one dollar to two dollars per acre, and to each and every such tract offered there shall be added and stated in the advertisement or descriptive circular the number of feet of hardwood at the rate of seventy-five cents per thousand feet and the number of feet of pine at one dollar and fifty cents per thousand feet.

All lands will be offered in tracts not exceeding one-quarter section, containing 160 acres, more or less.

§ 1148 LANDS OF THE FIVE CIVILIZED TRIBES.

(Sec. 5.) All cutting of timber from the timber land prior to the time when complete payment shall have been made for the land and timber and full title given, shall be conducted under the supervision of the Superintendent for the Five Civilized Tribes, or such other officer as the Secretary of the Interior shall designate, who shall have access to the premises at any time and all times for the purpose of examination and supervision. In lumber operations conducted under such circumstances, tops must be lopped and scattered or piled and burned, as required by the United States officer in charge, in his discretion, so as to reduce to a minimum the fire danger to timber on adjacent land. When the timber operations are permitted prior to full payment, the purchaser will be required to account under oath for the timber cut and removed from each separate tract as sold.

(Sec. 6.) Purchasers of the timber land shall not be permitted to dispose of timber from any tract, based on the appraised value of such timber, exceeding in value seventy-five per centum of the advance payment previously made on such tract, until the full purchase price has been paid, and any sale may be canceled by the Secretary of the Interior and the money paid declared forfeited in his discretion, for violation of this provision.

(Sec. 7.) The surface of the coal and asphalt lands except tracts withheld from sale by order of the Department, and except those tracts in regard to which a preferential right to purchase was granted by the above-mentioned or other Acts of Congress, shall be sold subject to the conditions contained in said Acts of Congress, and in accordance with these regulations. Where tracts are within the area covered by valid existing coal and asphalt leases the surface of such tracts shall be offered for sale subject to such leases. The surface and coal and asphalt of certain unleased tracts will be sold together, where authorized by the Secretary of the Interior, under provisions of section six of the Act of Congress of February nineteenth, nineteen hundred

and twelve. In all cases where the surface and coal and asphalt are all to be sold together the descriptive lists of the tracts offered shall so state. The terms "surface" and "surface of the land," as herein used, are defined to be the entire estate in the land save the coal and asphalt reserved in so far as relates to the coal and asphalt lands, except as otherwise herein provided. The balance of the land to be offered under these regulations includes the entire estate in the land without reservation.

(Sec. 8.) All sales of the surface of the segregated coal and asphalt land to which these regulations apply shall be on the condition that the Choctaw and Chickasaw Nations, their coal and asphalt grantees, lessees, assigns, or successors, shall have the right to enter upon said lands for the purpose of prospecting for coal or asphalt thereon or thereunder, and also the right of underground ingress and egress, without compensation to the surface owner, and on the further condition that said nations, their coal or asphalt grantees, lessees, assigns or successors shall have the right to acquire such parts of the surface of any tract as may be reasonably necessary for prospecting or for the conduct of mining operations or for removal of deposits of coal and asphalt, upon paying a fair valuation for the part of the surface so acquired, and that if the owner or lessee of the mineral deposits and the owner of the surface shall fail to agree upon the valuation, said owner or lessee of the mineral deposits shall have the right of entry upon the surface so acquired for mining purposes, as provided by section three of said Act of Congress of February nineteenth, nineteen hundred and twelve (37 Stat. L. 1), which reads in part as follows:

"If the owner of the surface and the then owner or lessee of such mineral deposits shall be unable to agree upon a fair valuation for the surface so acquired, such valuation shall be determined by three arbitrators, one to be appointed, in writing, a copy to be served on the other party

by the owner of the surface, one in like manner by the owner or lessee of the mineral deposits, and the third chosen by the two so appointed, and in case the two arbitrators so appointed should be unable to agree upon an arbitrator within thirty days, then and in that event, upon application of either interested party, the United States district judge in the district within which said land is located shall appoint the third arbitrator: **Provided**, the owner of such mineral deposits or lessee thereof shall have the right of entry upon the surface so to be acquired for mining purposes immediately after the failure of the parties to agree upon a fair valuation and the appointment as above provided, of an arbitrator by the said owner or lessee."

The purchaser of the surface of the land, his heirs, grantees, lessees or assigns, after full payment of the purchase price therefor, shall have the right to sink well, water or drill for oil and gas, only at such places within the purchased tract, and in such manner and with such means as the mining inspector for the State of Oklahoma and the representative for the United States Bureau of Mines may direct for the protection of coal mining, and shall not least interfere with or endanger present or future operations of mining for coal under said surface. No drilling for oil or gas shall be commenced on the purchased surface of the segregated coal and asphalt lands without first notifying the Mining Trustees of the Choctaw and Chickasaw Nations.

Any surface purchased by the coal and asphalt lands under the provisions of section two of the Act of Congress of February nineteenth, nineteen hundred and twelve, in the event of the failure of said lessee to purchase, under said provisions of law, the surface within their lease shall be reserved by the coal and asphalt operators as is provided for by the Bureau of Mines and Tribal Mining Trustees, shall be withheld from the sale at public auction under these regulations.

ec. 9.) Houses and other valuable improvements, not including fencing and tillage, placed upon the timber land prior to August first, nineteen hundred and thirteen, by individuals while in their possession, and which are located thereon at the time of the sale under these regulations, shall be sold at their appraised value for cash, together with the land and timber. Such improvements shall be sold for cash at the advertised minimum price and the purchaser shall make full payment therefor at the time of the sale. Houses and other valuable improvements, not including fencing and tillage, placed upon the coal and asphalt land, prior to January nineteenth, nineteen hundred and twelve, by individuals while in their possession, and which are located thereon at the time of the sale under these regulations, shall be sold together with the surface of said land independent of the appraised value of said improvements and land. If the purchase price of any tract of the surface of the segregated coal and asphalt land and the improvements thereon together as provided herein and independent of their appraised value, is equal to or greater than the combined appraised value of said tract and improvements, as shown on the approved appraisement schedules, it shall be deemed the purpose of settlement by the Superintendent for the Civilized Tribes with the former owner of said improvements that of said purchase price a sum equal to the appraised value of the improvements was realized from said improvements. If, however, the purchase price of any such tract, and the improvements thereon, sold together as provided herein and independent of their appraised value, is less than the combined appraised value of said tract and improvements, as shown on the approved appraisement schedules, the purchase price of said land and improvements shall be pro rated as having been received from said land and improvements, respectively, in the proportion that the appraised value of each bears to the total appraised value of said land and improvements. The proceeds realized from the sale of the improvements shall,

after approval of sale, be paid by the Superintendent of the Five Civilized Tribes, or such officer as the Secretary of the Interior may designate, to the former owners the less five per cent for cost of appraisement. If the owner of the improvements be the purchaser in the sale under regulations he shall, in the absence of any adverse claim allowed a cash credit equal to ninety-five per cent of amount realized from the sale of the improvements. Fifty per cent of all amounts received from the sale of said improvements shall be retained for the purpose of reimbursing the United States for the expense incurred in the appraisal and sale of such improvements. Owners of the improvements referred to in this section shall be notified if they do not desire said improvements to be sold with the land, as provided for herein, they will be given thirty days to remove same from said land.

(Sec. 10.) All of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations except tracts not heretofore offered, and the unallotted lands in the Creek Nation, shall be sold for cash without regard to the appraised value thereof, the purchaser to pay twenty-five per cent of the purchase price at the time of the sale and the balance within fifteen days thereafter: **Provided, however,** That in case the purchaser submitted his bid by mail, the fifteen days' period of time within which balance of the purchase price shall be paid, shall run from date of notice. Purchasers of the tracts sold, as herein provided for cash, will be given a deed as soon as full purchase price has been paid. All unallotted tribal land not including the timber and the segregated coal and asphalt areas including allotted lands that have heretofore been offered and not sold, or sold and the sale thereof canceled, shall be offered without the minimum price attached thereto. Fifty per cent of the surface of the segregated coal and asphalt lands heretofore offered shall not be sold for less than the appraised value.

(Sec. 11.) The Superintendent for the Five Civilized Tribes shall advertise all proposed sales for not less than sixty days. Such proposed sales shall be advertised and published in such manner and in such papers as the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, may authorize, and in addition thereto posters and circulars advertising the sale shall be posted in the office of the Superintendent for the Five Civilized Tribes and at such post-offices and other places as said Superintendent may deem advisable.

(Sec. 12.) There shall be no limitation as to the number of acres or tracts any one person may purchase, except that no person shall be permitted to purchase to exceed one hundred and sixty acres of the coal and asphalt lands classed as agricultural and six hundred and forty acres of the coal and asphalt lands classed as grazing, including land of these two classes previously purchased.

(Sec. 13.) The sale of the surface of the coal and asphalt lands in the Choctaw and Chickasaw Nations, except land not heretofore offered, and the unallotted lands of the Creek Nation, shall be for cash, as provided in section ten hereof. The terms of the sale of the timber and unallotted land shall be twenty-five per cent in cash at the time of the sale, and the balance in three equal annual installments of twenty-five per cent each, payable in one, two and three years, respectively, from date of sale. The terms of the sale of the surface of the segregated coal and asphalt land, not heretofore offered, shall be twenty-five per cent at the time of the sale, twenty-five per cent within one year and balance within two years from date of sale. The purchaser shall also pay on all deferred installments five per cent interest per annum from date of sale.

If default be made in any payments when due, all rights of the purchaser thereunder shall, at the discretion of the Secretary of the Interior, cease, and be thereby extinguished, and the land shall be taken possession of by the

said Secretary of the Interior for the benefit of the Choctaw, Chickasaw, and Creek Nations, and the money paid on the purchase price shall be forfeited to said nations.

Purchasers shall have the right to pay all of the purchase money or any deferred payment, or any portion thereof, at the time of sale or at any time before same is due, interest to be computed to date of receipt of payment.

Should any successful bidder fail to make the first twenty-five per cent payment at the time of the sale, his bid shall forthwith be rejected and the land shall again be offered for sale.

(Sec. 14.) Bids must conform to the tracts of land as advertised in the descriptive lists or circulars. No bids shall be accepted for any fractional part or subdivision of any tract offered for sale. Bids may be submitted personally by prospective purchasers or by their authorized agents, but in the latter case the bid must be accompanied by power of attorney duly executed by the real person in interest.

Minimum and maximum bids may be made by mail addressed to the Superintendent for the Five Civilized Tribes at the town where the sale is to be conducted and same will be considered if accompanied by a certified check or bank draft for twenty-five per cent of the amount of each separate bid, provided the same is received not later than the hour set for the sale, and provided that all tracts must be offered for sale at public auction, and if any higher bids are received than the one submitted by mail the certified check or bank draft accompanying such mailed bid shall be returned to the bidder as soon as properly receipted for. No raise of a bid will be considered at less than twenty-five cents per acre.

(Sec. 15.) All payments shall be made to D. Buddrus, Cashier and Special Disbursing Agent for the Five Civilized Tribes, unless otherwise directed by the Secretary of the Interior. The deposit of a successful bidder made as

nty of good faith shall be accepted as payment of that
it of the purchase price.

c. 16.) Immediately after any sale, schedules of the
successful bidders shall be prepared and submitted to the
Secretary of the Interior, or such officer as he may design-
ate for consideration and approval, such approval to be
subject to the condition that the Secretary of the Interior
may by formal order, set aside and vacate any proposed
sale for failure of the prospective purchaser to pay any part
of the purchase price or the interest thereon when the same
becomes due, or for other good reasons, also in such case
may by formal order to forfeit to the Choctaw, Chickasaw and
Creek Nations any or all the purchase money paid as a guar-
antee of good faith.

c. 17.) All tracts will be sold subject to such county
and public highways as may have been acquired by
condemnation proceedings or otherwise before the date of
these Regulations. Tracts traversed by lawful rights of way, railroads
or otherwise, shall be sold subject to such rights of way.

c. 18.) Separate blue print maps of all the land of-
fered under these regulations for each of the counties of
Adair, Cherokee, McIntosh and Haskell, showing the tract, numbers, loca-
tion of town-site additions on the segregated coal and as-
phalt land, and approximate location of the railroads,
rivers, and creeks, shall be prepared and offered for sale at
twenty-five cents each, for the information and convenience of
potential bidders, by the Superintendent for the Five
Civilized Tribes. Plats of the different townships of the
county of the segregated coal and asphalt land, showing
numbers, acres, railroads, improvements, tillage, etc.,
shall be prepared and offered for sale at twenty-five cents
each township plat. Separate plats of the town-site ad-
ditions of the coal and asphalt land classified as suitable
town lots will be prepared and offered for fifty cents

(Sec. 19.) Immediately after the approval by the Secretary of the Interior of the sales in any county, each bidder whose bid has been approved shall, except as otherwise provided in these regulations, be furnished a certificate of purchase describing the land included in his bid and setting forth the terms upon which payments are to be made and title obtained and stating that until full purchase price has been paid no drilling or operating for oil or gas or mining or drilling for minerals or removal of sand or stone, and no cutting or removal of merchantable timber from said lands will be permitted, except in the case of cutting timber from the unallotted timber land as herein provided.

No drilling or operating for oil or gas and no mining or drilling for minerals or removal of sand and stone, or cutting of timber will be permitted, except the cutting of timber on the timber land as herein provided, on any of the land sold under these regulations, until the full purchase price has been paid, and a violation of said provision shall operate as a forfeiture of all rights under the purchase.

Purchasers of timber and unallotted lands shall be entitled to possession of such lands upon issuance to them of certificates of purchase, and purchasers of the surface of the segregated coal and asphalt lands upon the approval of the sale.

(Sec. 20.) No person, including the present occupants of the land, or the surface thereof, to be offered under these regulations, shall have a preference right to the purchase of any of the land, or the surface thereof, except coal and asphalt lessees and others as expressly provided by the several Acts of Congress authorizing the sale of said land or the surface thereof, and except where the land, or the surface thereof, is reserved for churches and cemeteries.

(Sec. 21.) As soon as full payment is made for any tract of the land purchased under these regulations, a deed shall be issued conveying said land to the purchaser without any reservation, except in the case of the segregated coal and

halt land where the coal and asphalt are reserved. The d to the segregated coal and asphalt land, except where coal and asphalt and surface are sold together, shall be ed as soon as full payment is made for the tract, con- rving to the purchaser the property sold, and such deed ill contain the clause, "saving and excepting from this iveryance, however, all coal and asphalt, and this reserva- n, restriction, covenant and condition shall run with the id and bind the heirs, grantees, successors, representa- es, and assigns of the grantee herein." Such deed shall o contain a clause or clauses reciting and containing the er reservations, restrictions, covenants, and conditions der which the property is sold, as provided in the Acts Congress of February nineteenth, nineteen hundred and elve, and August twenty-fourth, nineteen hundred and elve, authorizing the sale, and shall specifically provide at said reservations, restrictions, covenants, and condi- ns shall run with the land and bind the heirs, grantees, ccessors, representatives, and assigns of the purchaser of e surface.

(Sec. 22.) That no person claiming improvements on the mber land and surface of the segregated coal and asphalt nd shall be entitled to remove them or receive any benefit erefrom unless he has heretofore filed his claim under th with the Superintendent for the Five Civilized Tribes, shall file such claim within sixty days from the approval reof with said Superintendent, and if no person has here- fore asserted or shall assert a claim within sixty days resaid to the improvements on any particular tract, such rovements shall be sold as a part of the land, but if a im has been filed or is filed by or on behalf of any per- 1 or persons prior to or within the sixty days, and no im adverse thereto filed within such time, the improve- ments shall be deemed to be the sole property of the person persons applying therefor upon satisfactory showing reof being made to the Secretary of the Interior. U

there be two or more conflicting claims to the improvements on any tract, at the time of the sale, the purchaser shall be required to pay the amount of the appraisal of such improvements, except as otherwise herein provided, and ninety-five per cent of such amount shall be held in the direction of the Secretary of the Interior and the owner of said improvements as finally determined by him.

(Sec. 23.) During the progress of the advertisement sale of the land under these regulations, the Superintendent for the Five Civilized Tribes shall, until otherwise ordered by the Secretary of the Interior, maintain offices at Muskogee, Poteau, and Hugo, Oklahoma, where the prospective purchasers may personally inspect plats, maps, etc., and be furnished with any information concerning the land without cost and be furnished any information in reference thereto.

(Sec. 24.) Prospective bidders for any of the lands offered under these regulations should inspect the lands and improvements prior to the date of sale and satisfy themselves as to the character of the land and condition of improvements actually on the ground, as no guarantee is made as to the character of the lands or of improvements thereon. No complaints by purchasers or claim for damages in the matter of improvements will be considered until a complaint or claim is filed with the Superintendent of the Five Civilized Tribes within sixty days from date of sale.

(Sec. 25.) The right is reserved to approve or disapprove any or all sales.

(Sec. 26.) Any further information desired may be obtained upon application to the Superintendent for the Five Civilized Tribes at Muskogee, Oklahoma.

Cato Sel

Commissioner of Indian Affairs

Approved: Department of the Interior, July 18, 1911

S. G. Hopkins, Assistant Secretary.

CHAPTER LXIV.

REGULATIONS OF SEPTEMBER 24, 1918

governing the sale of the coal and asphalt deposits in the segregated mineral area in the Choctaw and Chickasaw Nations, Oklahoma, under the provisions of the Act of Congress approved February 8, 1918. (Public—No. 98—Sixty-fifth Congress.)

144. Regulations Governing the Sale of Coal and Asphalt Deposits.—The following regulations are hereby prescribed under the provisions contained in the Act of Congress approved February eighth, nineteen hundred and seventeen (Public—No. 98—Sixty-fifth Congress), authorizing the sale of the leased and unleased coal and asphalt deposits in the Choctaw and Chickasaw Nations, Oklahoma.

c. 1.) The sale of said coal and asphalt shall be conducted under the supervision of the Superintendent for the Five Civilized Tribes, subject to the approval of the Secretary of the Interior.

c. 2.) The coal and asphalt, leased and unleased, shall be offered and sold in conformity with the districts, tracts, and schedules of appraisement thereof, approved by the Secretary of the Interior.

c. 3.) The Superintendent for the Five Civilized Tribes shall advertise and sell said coal and asphalt at public auction, to the highest and best bidder, for not less than appraised value, subject to the approval of the Secretary of the Interior, in accordance with the law and these regulations and when and as directed by the Commissioner of Indian Affairs, but not later than six months from the

date of the final appraisalment. The sale shall be held at McAlester, Oklahoma, on December eleventh, twelfth, thirteenth and fourteenth, nineteen hundred and eighteen.

(Sec. 4.) Said Superintendent shall, as soon as possible, prepare a list, in pamphlet form, of the tracts of the leased and unleased coal and asphalt to conform to the approved schedules of appraisalment, setting forth each tract number, a description of each tract, the number of acres in each tract, the appraised value of each tract, and the description of each tract included in the schedule of appraisalment approved by the Secretary of the Interior.

(Sec. 5.) Said Superintendent shall advertise the sale not less than sixty days; such sale to be advertised and published in such manner and in such papers and journals as the Commissioner of Indian Affairs may direct.

(Sec. 6.) All sales to which these regulations apply shall be upon the expressed conditions provided for in section four of said Act of Congress approved February eighth, nineteen hundred and eighteen, which reads as follows:

“Sec. 4. That such deposits of coal and asphalt on the leased lands shall be sold subject to all rights of the lessee and that any person acquiring said deposits of coal or asphalt shall take same subject to said rights and acquire the same under the express understanding and agreement that the Department of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over the operation of said mines by reason of the Indian ownership of said property and that said properties thereafter shall be operated under the and in conformity with such laws as may be applicable thereto, and that advance royalty paid by any lessee and standing to the credit of said lessee shall be credited by said purchaser to the extent of the amount thereof, and that no royalties shall be paid by said lessee to said purchaser until the credit so given shall be exhausted at the rate of eight cents per ton

run, and that the royalty to be paid thereafter by said to said purchaser shall be eight cents per ton mine of coal, and that any lessee may, at any time after completion of such sale, transfer or dispose of his leasehold interest without any restriction whatever; and that any lessee shall have the preferential right, provided the same is exercised within ninety days after the approval of the completion of the appraisal of the minerals as herein provided, to purchase at the appraised value any or all of the lands lying within such lease held by him and hereunto reserved by order of the Secretary of the Interior upon the terms as above provided, and shall also have preferential right, except as herein otherwise provided, to purchase the coal deposits embraced in any lease held by such lessee by taking same at the highest price offered by any responsible bidder at public auction at not less than the appraised value, and if any lessee becomes the purchaser of any coal deposits on any undeveloped lease owned by him, then one-half of the advance royalties paid by any lessee on such lease shall be credited on the purchase price of, and any residue of advance royalties heretofore paid by any lessee shall be credited to such lessee on account of any production of coal or any other lease which he may own and operate: **And provided,** That nothing herein contained shall be construed as limiting or curtailing the rights of any lessee or owner of mineral deposits in acquiring additional surface lands for mining operations as provided by the Act of Congress of February ninth, nineteen hundred and twelve: **Provided further,** no person or corporation shall be permitted to acquire more than four tracts of nine hundred and sixty acres each, at where such person, firm, or corporation has such interest under existing valid lease."

Sec. 7.) The terms of the sale shall be twenty per cent of the purchase price in cash at the time of the sale, and the remainder shall be paid in four equal annual payments

panied by a certified check or bank draft for twenty cent of the amount of each separate bid: **Provided,** same is received not later than the hour set for the **And provided further,** That all tracts must be offered at public auction, and if any higher responsible bid is received than the one submitted by mail, the certified check or draft accompanying such mailed bid shall be returned to the bidder.

(Sec. 11.) All payments shall be made to D. Bud Cashier, unless otherwise directed by the Commissioner of Indian Affairs.

(Sec. 12.) Until full and final payment is made for a tract, leased or unleased, all mining operations thereon shall be conducted under the supervision of the representative of the United States Bureau of Mines at McAlester, Oklahoma, and the Mining Trustees of the Choctaw and Chickasaw Nations, or such other officer or officers as the Commissioner of Indian Affairs may designate, and in accordance with existing laws and Department rules and regulations governing the leasing of the segregated coal and asphalt in said nations. The purchaser of any tract and lessee thereof, their grantees, lessees, assigns, or successors shall be required to account under oath to said Mining Trustees or officer or officers designated by the Commissioner of Indian Affairs, the number of tons of coal and asphalt mined and removed from such tract, and such Mining Trustees or officer and officers shall have the right to examine all books and records of mining operations of such purchaser, lessee, grantees, assigns or successors.

(Sec. 13.) Until full and final payment is made for a tract, leased or unleased, sold under these regulations, the purchaser shall pay, or cause to be paid to the Superintendent for the Five Civilized Tribes, monthly, eight cents per ton for all coal mined (mine run), and ten cents per ton for asphalt mined, such payments to be held by said Superintendent.

ndent to be applied on the purchase price, and upon rest of the purchaser may be applied in payment of any allment, when due. Any unused advance royalty to the lit of a lessee under existing leases shall be paid by said erintendent, when final payment of the purchase price ade, to the purchaser for the benefit of the lessee under terms of the lease and the Act of Congress approved ruary eighth, nineteen hundred and eighteen: **Provided,** ever, That if any lessee becomes the purchaser of any l deposits on any undeveloped lease owned by him, then -half of the advance royalties paid by any lessee on such e shall be credited on the purchase price thereof, and residue of advance royalties heretofore paid by any ee shall be credited to such lessee on account of any uction of coal on any other lease which he may own l operate.

all royalty paid on coal or asphalt mined subsequent to date of approval of the sale shall belong to the purchaser, subject to the requirement of a certain amount per , as above stated, to be paid to the Superintendent of : Five Civilized Tribes, to be applied on the purchase ce, which is to protect the Choctaw and Chickasaw ibes from loss on account of coal removed in case the ct should be forfeited before final payment is made.

Sec. 14.) The sales under these regulations do not inde the surface or right thereto, except that all sales of coal and asphalt shall be upon the conditions contained section three of the Act of Congress of February ninth, nineteen hundred and twelve (37 Stat. L. 67), which ds as follows:

That sales of the surface under this act shall be upon conditions that the Choctaw and Chickasaw Nations, ir grantees, lessees, assigns or successors shall have the ht at all times to enter upon said lands for the purpose prospecting for coal or asphalt thereon, and also the ht of underground ingress and egress, without compen-

sation to the surface owner, and upon the further condition that said nations, their grantees, lessees, assigns or successors shall have the right to acquire such portions of the surface of any tract, tracts, or rights thereto as may be reasonably necessary for prospecting or for the conduct of mining operations or for the removal of deposits of coal and asphalt, upon paying a fair valuation for the portion of the surface so acquired. If the owner of the surface and the then owner or lessee of such mineral deposits shall be unable to agree upon a fair valuation for the surface so acquired, such valuation shall be determined by three arbitrators, one to be appointed, in writing, a copy to be served on the other party by the owner of the surface, one in like manner by the owner or lessee of the mineral deposits, and the third to be chosen by the two so appointed; and in case the two arbitrators so appointed should be unable to agree upon a third arbitrator within thirty days, then and in that event, upon the application of either interested party, the United States district judge in the district within which said land is located shall appoint the third arbitrator: **Provided**, That the owner of such mineral deposits or lessee thereof shall have the right of entry upon the surface so to be acquired for mining purposes immediately after the failure of the parties to agree upon a fair valuation and the appointment, as above provided, of an arbitrator by the said owner or lessee."

(Sec. 15.) Immediately after any sale, schedules of the successful bidders shall be prepared and forwarded to the Commissioner of Indian Affairs for approval or disapproval. The Secretary of the Interior may set aside and vacate any proposed sale for failure of the prospective purchasers to pay any part of the purchase price, or the interest thereon when same becomes due, or for other good reasons; also such case to forfeit to the Choctaw and Chickasaw Nations any and all money paid by said prospective purchasers.

(Sec. 16.) Immediately after the approval by the Sec



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ry of the Interior of the sales in any district, each bidder whose bid has been approved shall be furnished with a certificate of purchase describing the tract included in his bid and setting forth the conditions of the sales and the terms upon which payments are to be made and title obtained, and stating until the full purchase price has been paid, all mining operations shall be conducted under the supervision of the said representative of the United States Bureau of Mines and Mining Trustees of the Choctaw and Chickasaw Nations, or such other officer or officers as may be designated by the Commissioner of Indian Affairs, which certificate of purchase will entitle the purchaser to possession of the coal and asphalt in the tract purchased by him, subject to all of the conditions authorizing the sale thereof, as provided by said Act of Congress, and all of the conditions provided for in these regulations.

[Sec. 17.) As soon as full and final payment is made for any tract of coal and asphalt sold under these regulations, a patent shall be issued conveying to the purchaser any and all coal and asphalt underlying the entire surface of such tract, subject to all the rights of any lessee or any tract owner of such coal and asphalt, and such patent shall contain a recital of the use or clauses reciting and containing the restrictions, covenants and conditions under which the property is sold, in accordance with the provisions of section four of said Act of Congress approved February eighth, nineteen hundred and eighteen, and section three of said Act of Congress of February nineteenth, nineteen hundred and twelve.

[Sec. 18.) In all cases where any purchaser has acquired a patent said coal and asphalt deposits sold under these regulations, the Secretary of the Interior will cancel and withdraw all rules and regulations and relinquish all authority heretofore exercised over said deposits by reason of the Indian ownership of same, as provided in said Act of Congress approved February eighth, nineteen hundred and eighteen.

(Sec. 19.) All tracts will be sold subject to such county roads and public highways as may have been established by condemnation proceedings or otherwise, before the date of the sale. Tracts traversed by lawful rights of way for railroads or other purposes shall be sold subject to such rights of way.

(Sec. 20.) No person, firm, or corporation will be permitted to acquire more than four tracts of nine hundred and sixty acres each, except where such person, firm, or corporation has such tracts under existing valid lease.

(Sec. 21.) For the informaton and convenience of prospective bidders, and for free distribution, the Superintendent for the Five Civilized Tribes shall prepare blue print maps of each of the districts hereinbefore referred to, showing the tract numbers, location of the leased and unleased tracts, outcrops, railroads, towns and other data. He shall also prepare fractional or sheet maps of each district, on a scale of one thousand feet to the inch, showing the location of the leased and unleased tract, outcrops, worked-out area, mines, railroads, towns, etc., and offer same for sale at one dollar each.

(Sec. 22.) Prospective bidders for the coal and asphalt offered under these regulations should satisfy themselves as to the quality and condition of coal and asphalt in each tract, as no guaranty is made relative thereto. All unleased lands shall first be offered for sale.

(Sec. 23.) During the progress of the advertisement and sale of the coal and asphalt under these regulations, the Superintendent for the Five Civilized Tribes shall maintain an office at McAlester, Oklahoma, where prospective purchasers may personally inspect plats, maps, etc., of the coal and asphalt and be furnished all available information.

(Sec. 24.) The right is reserved to reject any and all bids and to approve or disapprove any and all sales.

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(Sec. 25.) Any further available information desired may be had upon application to the Superintendent for the Five Civilized Tribes at McAlester, Oklahoma. The Government sends out no exhibit cars to furnish information.

Cato Sells,
Commissioner of Indian Affairs.
Department of the Interior, Washington, D. C.

Approved Sept. 24, 1918.

S. G. Hopkins, Secretary of the Interior.

CHAPTER LXV.

Regulations to govern the utilization of casing-head produced from oil wells on restricted Indian I (Not Applicable to the Osage Nation.)

§ 1145. Section two of the act approved May two seventh, nineteen hundred and eight (35 Stat. L. 312), provides:

“That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allotted individual, or by guardian or curator under order of the probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: **Provided**, That leases of restricted lands for oil, gas, or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods more than five years may be made, with the approval of the Secretary of the Interior, under rules and regulations prescribed by the Secretary of the Interior, and not otherwise.”

A provision in the Act of March third, nineteen hundred and nine (35 Stat. L. 781, 783), reads:

“That oil lands allotted to Indians in severalty, except allotments made to members of the Five Civilized Tribes and Osage Indians in Oklahoma, may by said allottee be leased for mining purposes for any terms of years as may be deemed advisable by the Secretary of the Interior; and the Secretary of the Interior is hereby authorized to perform any and all acts and make such rules and regulations as may be necessary for the purpose of carrying the provisions of this paragraph into full force and effect.”

In accordance with the above provision of law, the following regulations are prescribed to govern the utilization of casing-head gas produced from oil wells on restricted

1 lands (except Osage) and the computation of the
y interest of the Indian lessor:

DEFINITIONS.

following expressions whenever used in the regula-
shall have the meaning now designated, viz.:

ing-head gas: The gas from an oil well coming
gh the casing with the oil from oil-producing strata.

ing-head gasoline: The petroleum product obtained
casing-head gas.

erintendent: The local field officer in charge of re-
d lands of members of Indian Tribes upon which oil
are located and whose duty shall be to enforce com-
e with these regulations.

pector: Any person appointed as inspector of oil wells,
o may be designated by the Secretary of the Interior
ervice oil operations under the direction of the Super-
lent.

lessee: Any person, firm, or corporation owning an
ning lease on restricted Indian lands.

oline plant: Plant operated for the purpose of ex-
ng casing-head gasoline from casing-head gas.

REGULATIONS.

c. 1.) Contracts shall be entered into between lessees
tricted Indian land and owners of gasoline plants for
le of casing-head gas, which shall provide for a mini-
royalty interest for the Indian lessor of twelve and
alf per cent (or the royalty specified in the lease) of
ross proceeds of such sale, to be computed on the basis
ted by schedule marked "Figure 1," unless it is sold
higher basis, in which event it shall be computed on
basis.

c. 2.) Contracts entered into between lessees and
s of gasoline plants shall be filed with the Superintend-
ithin thirty days after date of execution, and shall be
ve only from date of approval by the Superintendent.

(Sec. 3.) All contracts for the sale of casing-head shall be made subject to the rules and regulations of Department now existing, or hereafter to be promulgated and shall provide that the schedule marked "Figure 1" may be revised by the Secretary of the Interior upon request to all parties concerned, and an opportunity given them to be heard: **Provided**, Such revision shall not apply to existing approved contracts so as to alter the term of the contract, the rate of royalty, the method of computing the royalty, or the basis of such computation, without the consent of the parties thereto. Such contracts shall also provide that they may be canceled by the Superintendent for violation of the terms thereof or the regulations, after ten days' notice to the parties concerned and an opportunity to be heard has been afforded them.

(Sec. 4.) When lessees manufacture casing-head gas from casing-head gas produced from their own leases, the payment for the royalty interest of the Indian lessor shall be at the rate of twelve and one-half per cent (or the royalty specified in the lease), to be computed on the basis of the schedule marked "Figure 1," and which shall be subject to change as provided in paragraph 3.

(Sec. 5.) The gasoline productivity of the casing-head gas per thousand cubic feet shall be determined by a physical field test of the gas produced from each lease in the following manner: By the use of one of the standard appliances used for testing the gasoline contents of gas, which shall be approved by the department. The gasoline shall, after being condensed in what is known as the accumulation tank, be reduced to atmospheric pressure, or zero on gauge, then drawn off and the temperature raised in an open vessel to sixty degrees Fahrenheit at a rate not to exceed one degree every two minutes. The gasoline remaining reduced to a basis of gallons per thousand cubic feet, shall be considered the gasoline content for the purpose of the

gulations: **Provided**, When gas is run through a common meter in accordance with paragraph six, its gasoline productivity shall be tested the same as gas produced from a single lease.

(Sec. 6.) All casing-head gas from each lease shall be metered on the leased premises and computed at a basis of cubic ounces to a square inch above atmospheric pressure. Where the volume of gas is extremely small, upon application to the Superintendent, permission may be granted to install a common meter for two or more leases. In such case the total amount of casing-head gas removed shall be apportioned between the separate leases and apportioned as to the number of connecting wells thereon. All meters shall be open to inspection at any time by the inspectors in the Indian Service, or whomever the Superintendent may designate for such purpose.

(Sec. 7.) Sworn statements shall be made to the Superintendent by lessees, and by the person in charge of the gasoline plants to whom casing-head gas is sold, showing: (1) The volume of casing-head gas purchased from each lease; (2) the productivity of such gas per thousand cubic feet as determined by the physical field test as prescribed in section five; (3) the price at which the merchantable gasoline is sold; and (4) the amount paid to the lessee. These statements shall be made not later than the twentieth day of each month for the preceding month, and at the same time payment shall be made of the royalty interest to the Superintendent by the lessee, or by the purchaser, in accordance with section nine hereof. The books of both lessee and purchaser shall be open to inspection on order of the Superintendent so far as to test the accuracy of the sworn statements referred to above, and to determine whether the interests of the restricted lessor are fully protected.

(Sec. 8.) Lessees shall secure the consent of the Superintendent to manufacture gasoline from casing-head gas

produced on restricted leases owned by such lessees. The productivity of the casing-head gas shall be determined as prescribed in section five, and sworn statements as indicated in paragraph seven, accompanied by remittance of the royalty interest, shall be mailed to the Superintendent not later than the 25th day of each month, for casing-head gas utilized for the manufacture of casing-head gasoline during the preceding month, the computation to be made on the basis indicated by schedule marked "Figure 1."

(Sec. 9.) The Superintendent may make arrangements with purchasers of casing-head gas for payment of the royalty, which arrangement shall not relieve lessees from responsibility for payment should the purchaser fail, neglect, or refuse to pay the royalty when it becomes due.

(Sec. 10.) Physical field tests of the gasoline productivity of casing-head gas as prescribed in paragraph five shall be made at quarterly periods (as nearly as may be convenient on January first, April 1st, July first, and October first, under departmental supervision, and the result thus obtained shall be the basis on which settlement shall be made for the casing-head gas, until the next test is taken. The April and October tests may be waived by the Superintendent when information furnished him shall so justify. No expense in making these tests shall be chargeable to restricted lessors.

(Sec. 11.) Casing-head gas, or the dry gas remaining after extracting gasoline, and not used for developing purposes, may be disposed of and the proceeds accounted for as is provided for by the terms of the lease.

(Sec. 12.) The Superintendent shall have authority to grant permission for erection of gasoline plants on departmental leases, and contracts for that purpose shall be submitted to him for approval, specifying the term, the acreage to be used, and fixing the price per acre per annum to be paid therefor.

§ 1146. Table for Computing Royalty on Casing-head Gas.—

FIGURE 1.

Sale price per gallon or less	Gallons per 1,000 cubic feet.																							
	1½	1	1½	2	2½	3	3½	4	4½	5	5½	6	6½	7	7½	8	8½	9	9½	10	10½	11	11½	12
Cents	Cents per 1,000 cubic feet of gas.																							
6	¾	2	2	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
7	¾	2	3	5	6	7	8	9	11	12	13	14	15	16	18	19	20	21	22	23	25	26	27	28
8	¾	2	3	5	7	8	9	11	12	13	15	16	17	19	20	21	23	24	25	27	28	29	31	32
9	¾	2	3	6	7	9	11	12	14	15	16	18	20	21	23	24	25	27	29	30	32	33	34	36
10	1	3	4	7	8	10	12	13	15	17	18	20	22	23	25	27	28	30	32	33	35	37	38	40
11	1	3	4	7	9	11	13	15	17	18	20	22	24	26	28	29	31	33	35	37	39	40	42	44
12	1	3	5	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48
13	1	3	5	9	11	13	15	17	20	22	24	26	28	30	33	35	37	39	41	43	46	48	50	52
14	1½	4	5	9	12	14	16	19	21	24	26	28	30	33	35	37	40	42	44	47	49	51	54	56
15	1½	4	6	10	12	15	18	20	23	26	27	30	33	35	38	40	42	45	48	50	53	55	57	60
16	1½	4	6	11	13	16	19	21	24	27	29	32	35	37	40	43	45	48	51	53	56	59	61	64
17	1½	4	6	11	14	17	20	23	26	29	31	34	37	40	43	45	48	51	54	57	60	62	65	68
18	2	5	7	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60	63	66	69	72
19	2	5	7	13	16	19	22	25	29	32	35	38	41	44	48	51	54	57	60	63	67	70	73	76
20	2	5	8	13	17	20	23	27	30	33	37	40	43	47	50	53	57	60	63	67	70	73	77	80
21	2	5	8	14	17	21	25	28	32	35	38	42	46	49	53	56	59	63	67	70	74	77	81	84
22	2	6	8	15	18	22	26	29	33	37	40	44	48	51	55	59	62	66	70	73	77	81	84	88
23	2	6	9	15	19	23	27	31	35	38	42	46	50	54	58	61	65	69	73	77	81	84	88	92
24	2	6	9	16	20	24	28	32	36	40	44	48	52	56	60	64	68	72	76	80	84	88	92	96
25	2	6	9	17	21	25	29	33	38	42	46	50	54	58	63	67	71	75	79	83	88	92	96	100
26	3	7	10	17	22	26	30	35	39	43	48	52	56	61	65	69	74	78	82	87	91	95	100	104
27	3	7	10	18	22	27	32	36	41	45	49	54	59	63	68	72	76	81	86	90	95	99	104	108
28	3	7	11	19	23	28	33	37	42	47	51	56	61	65	70	75	79	84	89	93	98	103	107	112
29	3	7	11	19	24	29	34	39	44	48	53	58	63	68	73	77	82	87	92	97	102	106	111	116
30	3	8	11	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	95	100	105	110	115	120

This table is the Minimum at which casing-head gas may be sold.

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LANDS OF THE FIVE CIVILIZED TRIBES.

Department of the Interior,
Office of Indian Affairs,

August 10, 1917.

The foregoing regulations are respectfully submitted to the Secretary of the Interior with the recommendation that they be approved.

Cato Sells,
Commissioner of Indian Affairs.

Department of the Interior, August 10, 1917.

Approved: Franklin K. Lane, Secretary.

§ 1147. **Instructions for Settling Royalty Interests in Casing-head Gas.**—In order to secure uniformity in reports on production, sale, and settlement for royalty interest of casing-head gas under regulations approved August tenth, nineteen hundred and seventeen, your attention is invited to the following directions. Please comply with same:

CONTRACTS.

Section one of the Regulations requires that contracts be executed between producers and purchasers and that the schedule, marked figure one, shall be the minimum price paid for the royalty interest in casing-head gas.

PERMITS.

Section eight requires that a permit be secured when producers wish to manufacture their own gas into gasoline. All lessees, whether selling or manufacturing, must pay royalty interest based on the Chicago tank wagon quotation and productivity of gas; or on a higher rate than schedule if sale is made at a higher rate.

PRODUCTIVITY.

Productivity as computed in Figure one is based on half gallon units; for example, if productivity is from three

CASINGHEAD GAS.

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and twenty-four hundredths gallons inclusive per cubic feet, settlement may be made on the basis of gallons. If productivity is from three and twenty-four hundredths to three and fifty hundredths per thousand cubic feet, settlement must be made on basis of three and fifty hundredths.

OLD CONTRACTS.

As to old contracts executed prior to August tenth, 1917, and prior to the first of January, 1918, the contract price will be the price fixed by the schedule. If that price is higher than that fixed by the schedule, the contract price is lower than that fixed by the schedule, the price fixed by the schedule must be paid. Contracts made at a lower price than that fixed by the schedule will not be valid if either or both parties to the contract agree that the lessor's interest shall be governed by the regulations in all particulars.

REPORTS.

Sections seven of the Regulations require that monthly reports be made on forms provided (Blanks 386—6-10-18) by producers and purchasers. All information required by the regulations must be furnished. When lessees use their own reports, the productivity may, on application, be determined on the basis of the average monthly plant production; payment to be based on the Chicago tank wagon quotation and schedule, figure one.

SAMPLE SETTLEMENTS.

Boys, Barrels Oil or Cubic Feet Gas.	Per Cent of Royalty.	Sale Price per Barrel Oil or Per 1000 Cubic Feet Gas.	Yield of Gasoline Per 1000 Cubic Feet Gas.	Price for Which Gasoline Was Sold.	Amount Paid Lessee.	Amount of Lessor's Royalty.
600,464	12½	22	3 Gal.	22	\$1,056.81	\$132.11

Above settlements for royalty interest and report

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LANDS OF THE FIVE CIVILIZED TRIBES.

made in accordance with the schedule either under permit or contracts.

Gr. Barrels Oil or Cubic Feet Gas.	Boz. Barrels Oil or Cubic Feet Gas.	Per Cent of Royalty.	Sale Price per Barrel Oil or Per 1000 Cubic Feet Gas.	Yield of Gasoline Per 1000 Cubic Feet Gas.	Price for Which Gasoline Was Sold.	Amount Paid Lessee.	Amount of Lessor's Royalty.
201,902.40	25,237.80	12½	21%	2½	23	\$38.65	\$5.53

(2.) Above settlement for royalty interest, when price specified is higher than the schedule. For example, sale price of twenty-one and seven-eighths cents per thousand cubic feet is higher than the price would be, fixed by the schedule, based on productivity of two and one-half gallons per thousand cubic feet and the Chicago tank wagon price of twenty-three cents.

Gr. Barrels Oil or Cubic Feet Gas.	Boz. Barrels Oil or Cubic Feet Gas.	Per Cent of Royalty.	Sale Price per Barrel Oil or Per 1000 Cubic Feet Gas.	Yield of Gasoline Per 1000 Cubic Feet Gas.	Price for Which Gasoline Was Sold.	Amount Paid Lessee.	Amount of Lessor's Royalty.
3,202,472	400,309	12½	6½	3 Gal.	19	\$208.16	\$85.07

(3.) Above settlement for royalty interest, where sale price in contract is less than the schedule; for example, six and one-half cents per thousand cubic feet is less than price fixed by the schedule, productivity three gallons and the Chicago tank wagon price, twenty-two cents, price of gas should be twenty-two cents.

Respectfully,

.....
Superintendent for the Five Civilized Tribes

Keep this for reference.

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